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# THE GENERAL STATUTES OF NORTH CAROLINA

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The Cumulative Supplement to Volume 2B contains the annotated laws of a portion of the session laws of the 1977 Regular Session and the laws of the 1977 Special Session which are within the scope of this volume.

## 1979 CUMULATIVE SUPPLEMENT

Amendments of former laws are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper Chapter headings. Editors note \_\_\_\_\_ many of the changes effected by the ascendancy acts.

Annotated, under the Supervision of the Department of  
Justice, by the Editorial Staff of the Publishers

*Under the Direction of*

D. P. HARRIMAN, S. C. WILLARD AND SYLVIA FAULKNER

Beginning with the opinion of the North Carolina Attorney General on July 1, 1969, any opinion or letter from the Attorney General concerning herein becomes an annotation to that statute. An annotation is noted to the contrary in an editor's note or an effective date note.

## Volume 2B

### 1975 Replacement

The members of the North Carolina Bar are invited to communicate any defects they may find in the annotations contained in this Supplement and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to The Michie Company, Law Publishers, Charlottesville, Virginia.

Annotated through 297 N.C. 304 and 41 N.C. App. 192. For complete scope of annotations, see scope of volume page.

Place in Pocket of Corresponding Volume of Main Set.  
This Supersedes Previous Supplement, Which  
May Be Retained for Reference Purposes.

THE MICHIE COMPANY  
*Law Publishers*  
CHARLOTTESVILLE, VIRGINIA  
1979

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## Preface

This Cumulative Supplement to Replacement Volume 2B contains the general laws of a permanent nature enacted at the First and Second 1975, the 1977 Sessions and the First 1979 Session of the General Assembly which are within the scope of such volume, and brings to date the annotations included therein.

Amendments of former laws are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings. Editors' notes point out many of the changes effected by the amendatory acts.

Chapter analyses show all sections except catchlines carried for the purpose of notes only. An index to all statutes codified herein appears in Replacement Volumes 4B, 4C and 4D.

A majority of the Session Laws are made effective upon ratification, but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after 30 days after the adjournment of the session" in which passed. All legislation appearing herein became effective upon ratification, unless noted to the contrary in an editor's note or an effective date note.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute will be cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P.O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Supplement and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to The Michie Company, Law Publishers, Charlottesville, Virginia.



# The General Statutes of North Carolina

## Scope of Volume

### 1979 Cumulative Supplement

#### Statutes:

Permanent portions of the general laws enacted at the First and Second 1975, the 1977 Sessions and the First 1979 Session of the General Assembly 1975, affecting Chapters 53 through 62 of the General Statutes.

#### Annotations:

##### Sources of the annotations:

- North Carolina Reports through volume 297, p. 304.
- North Carolina Court of Appeals Reports through volume 41, p. 192.
- Federal Reporter 2nd Series through volume 597, p. 283.
- Federal Supplement through volume 469, p. 738.
- Federal Rules Decisions through volume 81, p. 262.
- United States Reports through volume 438, p. 783.
- Supreme Court Reporter through volume 99.
- North Carolina Law Review.
- Wake Forest Intramural Law Review.
- Duke Law Journal.
- North Carolina Central Law Journal.
- Opinions of the Attorney General.



# The General Statutes of North Carolina

## 1979 Cumulative Supplement

### VOLUME 2B

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## ARTICLE 1.

*Definitions.*

**§ 53-1. "Bank," "surplus," "undivided profits," and other words defined.** — The following definitions shall be applied to the terms used in this Chapter:

- (9) Unimpaired Capital Fund. — The term "unimpaired capital fund" means the total of the amount of unimpaired common stock, preferred stock, surplus, and the amount of capital debentures or notes, convertible or otherwise, having an average original maturity of at least seven years, which have been specifically designated as part of the bank's unimpaired capital fund by resolution duly adopted by the board of directors of the bank; provided, that upon payment of such capital debentures or notes or upon accumulation of funds in a sinking fund for amortization of such debentures or notes, unimpaired capital fund shall be reduced by the amount of such payment or accumulation. The terms and conditions of any issue of or prepayment of capital debentures or notes must have the prior written approval of the Commissioner of Banks affirming that in his opinion such issue or prepayment is in the best interest of the depositors, creditors and stockholders of the bank. (1921, c. 4, s. 1; C.S., s. 216(a); 1927, c. 47, s. 1; 1931, c. 243, s. 5; 1945, c. 743, s. 1; 1967, c. 789, s. 21; 1979, c. 483, s. 2.)

**Editor's Note.** —

The 1979 amendment added subdivision (9).

As the rest of the section was not changed by the amendment, only the introductory material and subdivision (9) are set out.

## ARTICLE 2.

*Creation.*

**§ 53-14. Reorganization.** — Whenever any bank under the laws of this State or of the United States is authorized to dissolve, and shall have taken the necessary steps to effect dissolution, or upon a national bank making application to convert to a State-chartered bank, it shall be lawful for a majority of the directors of such bank, upon authority in writing of the owners of two thirds of its capital stock, with the approval of the Commissioner of Banks, to execute articles of incorporation as provided in this Chapter, which articles, in addition to the requirements of law, shall further set forth the authority derived from the stockholders of such national bank or State bank, and upon filing the same as hereinbefore provided for the organization of banks, the same shall become a bank under the laws of this State, and thereupon all assets, real and personal, of the dissolved national or State bank shall by operation of law be vested in and become the property of such State bank, subject to all liabilities of such national or State bank not liquidated under the laws of the United States or this State before such reorganization. (1921, c. 4, s. 14; C.S., s. 217(m); 1931, c. 243, s. 5; 1979, c. 483, s. 3.)

**Editor's Note.** — The 1979 amendment inserted "or upon a national bank making application to convert to a State-chartered bank" near the beginning of this section.

## ARTICLE 6.

*Powers and Duties.*

**§ 53-43. General powers.** — In addition to the powers conferred by law upon private corporations, banks shall have the power:

(3) To purchase, hold, and convey real estate for the following purposes:

Such as shall be necessary for the convenient transaction of its business, including furniture and fixtures, with its banking offices and other spaces to rent as a source of income, which investment shall not exceed fifty percent (50%) of its unimpaired capital fund: Provided, that this fifty percent (50%) limitation shall not apply to banking houses, furniture and fixtures leased for the purposes set forth in this subdivision. Provided, further, that if any bank shall demonstrate to the satisfaction of the Commissioner of Banks that an investment of more than fifty percent (50%) of its unimpaired capital fund in its banking houses, furniture and fixtures, would promote the convenience of the general public in transacting its banking business and would not adversely affect the financial stability of the bank, the Commissioner of Banks may, in his discretion, authorize any bank to invest more than fifty percent (50%) of its unimpaired capital fund in its banking houses, furniture and fixtures.

(1979, c. 483, s. 4.)

**Editor's Note.** —

The 1979 amendment rewrote former paragraph a of subdivision (3) and deleted paragraphs b and c. Paragraph b read: "Such as is mortgaged to it in good faith by way of security for loans made or moneys due to such banks." Paragraph c provided for the purchase, holding, and conveyance of real estate purchased at

foreclosure sales and sales on judgments for debts due to the bank, required sale of such property within one year of acquisition, and repealed powers granted to anyone doing a banking business in connection with an insurance business.

As the rest of the section was not changed by the amendment, only the introductory material and subdivision (3) are set out.

**§ 53-46. Limitations on investments in securities.** — The investment in any bonds or other debt obligations of any one firm, individual, or corporation, unless it be the obligations of the United States, or agency thereof, or other obligations guaranteed by the United States Government, State of North Carolina, or other state of the United States, or of some city, town, township, county, school district, or other political subdivision of the State of North Carolina, shall at no time be more than twenty percent (20%) of the unimpaired capital fund of any bank to an amount not in excess of two hundred fifty thousand dollars (\$250,000); and not more than ten percent (10%) of the unimpaired capital fund in excess of two hundred fifty thousand dollars (\$250,000). (1921, c. 4, s. 27; C.S., s. 220(b); 1927, c. 47, s. 6; 1931, c. 243, s. 5; 1933, c. 359; 1935, c. 199; 1937, c. 186; 1967, c. 789, s. 8; 1979, c. 483, s. 5.)

**Editor's Note.** — The 1979 amendment substituted "fund" for "and permanent surplus" near the middle and near the end of this section

and deleted "and" after "two hundred" near the middle and near the end of this section.

**§ 53-48. Limitations of loans.** — The total direct and indirect liability of any person, firm or corporation, other than a municipal corporation for money borrowed, including in the liabilities of a firm, the liabilities of the several members thereof, shall at no time exceed twenty percent (20%) of two hundred

and fifty thousand dollars (\$250,000), or fractional part thereof, of the unimpaired capital fund of the bank and not more than ten percent (10%) of the excess of two hundred and fifty thousand dollars (\$250,000) of the unimpaired capital fund of the bank: Provided, however, that the discount of bills of exchange drawn in good faith against actual existing values, the discount of solvent trade acceptances, or other solvent commercial or business paper actually owned by the person, firm or corporation negotiating the same and the purchase of any notes, the making of any loans, secured by not less than a like face amount of bonds of the United States, or an agency of the United States, or other obligations guaranteed by the United States Government, or State of North Carolina or certificates of indebtedness of the United States, or agency thereof, or other obligations guaranteed by the United States Government, shall not be considered as money borrowed within the meaning of this section: Provided, further, that the limitations of this section shall not apply to loans or obligations to the extent that they are secured or covered by guarantees or by commitments or agreements to take over or purchase the same, made by any federal reserve bank or by the United States or any department, board, bureau, commission or establishment of the United States, including any corporation wholly owned directly or indirectly by the United States. (1921, c. 4, s. 29; 1923, c. 148, s. 6; C.S., s. 220(d); 1925, c. 119, s. 1; 1927, c. 47, s. 7; 1937, c. 419; 1943, c. 204; 1945, c. 127, s. 1; 1967, c. 789, s. 9; 1979, c. 483, s. 6.)

**Editor's Note.** — The 1979 amendment substituted "fund" for "and permanent surplus" in two places preceding the first proviso.

**§ 53-51. Reserve and cash defined.** — (a) Reserve shall consist of:

- (1) Cash on hand;
  - (2) Balances payable on demand, due from other approved solvent banks, which have been designated depositories as hereinafter provided in this Chapter; and
  - (3) Subject to rules and regulations, duly adopted by the State Banking Commission, fixing the maximum percentage of required reserves that may consist of such obligations, the following prescribed unencumbered, interest-bearing obligations, which shall not have more than 120 days to final maturity:
    - a. Obligations of the United States Treasury and of any agency of the United States which are guaranteed by the United States Government; and
    - b. General obligation of the State of North Carolina and of any political subdivision thereof which has received an investment rating of A or higher by a nationally recognized rating service.
- (b) For purposes of this section, cash shall include both lawful money of the United States and exchange of any clearinghouse association. (1903, c. 275, s. 29; Rev., s. 232; 1919, c. 58; 1921, c. 4, s. 32; C.S., s. 220(g); 1979, c. 483, s. 7.)

**Editor's Note.** — The 1979 amendment rewrote this section, incorporating its former provisions in subdivisions (1) and (2) of

subsection (a) and in subsection (b) and adding subdivision (3) of subsection (a).

**§ 53-53. Payment of deposit in the name of minor.**

**Editor's Note.** —

For article, "The Contracts of Minors Viewed from the Perspective of Fair Exchange," see 50 N.C.L. Rev. 517 (1972).

**§ 53-62. Establishment of branches; tellers' windows and off-premises customer-bank communications terminals.**

(d1) Subject to such rules and regulations as may be prescribed by the State Banking Commission with regard to their use, maintenance and supervision, any bank may establish off the premises of any principal office, branch or teller's window a customer-bank communications terminal, point-of-sale terminal, automated teller machine, automated banking facility or other direct or remote information-processing device or machine, whether manned or unmanned, through or by means of which information relating to any financial service or transaction rendered to the public is stored and transmitted, instantaneously or otherwise, to or from a bank or other nonbank terminal; and the establishment and use of such a device or machine shall not be deemed a branch or teller's window, and the capital requirements and standards for approval of a branch or teller's window, all as set forth in subsections (b) and (c) above, shall not be applicable to the establishment of any such off-premises terminal device or machine; provided, however, that no bank, savings and loan association, savings bank, credit union or any other financial institution which is not domiciled in North Carolina may establish in North Carolina any information processing device or machine described in this subsection.

(1975, cc. 553, 850.)

**Editor's Note. —**

The first 1975 amendment, effective July 1, 1975, added subsection (d1).

The second 1975 amendment, effective July 1, 1975, inserted "and the" preceding "establishment and use of" near the middle of new subsection (d1) added by the first 1975 amendment.

As the rest of the section was not changed by the amendments, only subsection (d1) is set out.

**Approval of Branch National Bank. —**

The Comptroller of the Currency must look to State law to determine if a branch bank can be opened. *Security Bank & Trust Co. v. Heimann*, 452 F. Supp. 776 (M.D.N.C. 1978).

The decision of the Comptroller of the Currency authorizing the opening of a branch bank must be affirmed unless it was arbitrary and capricious. *Security Bank & Trust Co. v. Heimann*, 452 F. Supp. 776 (M.D.N.C. 1978).

**National Bank Branch to Meet "Need and Convenience" Test. —** In accordance with subsection (b)(i) of this section, the Comptroller of the Currency must find that the establishment of a branch bank "will meet the needs and promote the convenience of the community." *Security Bank & Trust Co. v. Heimann*, 452 F. Supp. 776 (M.D.N.C. 1978).

**National Bank Branch to Meet Solvency Test. —** The plain wording of subsection (b)(ii) of this section, which is the second part of the test made applicable to the Comptroller of the Currency by North Carolina law, indicates that a new bank branch and the existing bank or banks must meet the solvency test. The statute does not say the new branch and the existing

branch or branches in the area. *Security Bank & Trust Co. v. Heimann*, 452 F. Supp. 776 (M.D.N.C. 1978).

**Appropriate standard for judicial review of informal administrative agency action. —** *Camp v. Pitts*, 411 U.S. 138, 93 S. Ct. 1241, 36 L. Ed. 2d 106 (1976) (Per Curiam), clearly held that the appropriate standard to be used by the district court in reviewing an administrative agency's justification for informal action is not the substantial evidence test, which is appropriate when reviewing findings made on a hearing record, but rather whether the comptroller's adjudication was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." Where a fact-finding hearing is held, clearly the standard of review is substantial evidence. *Security Bank & Trust Co. v. Heimann*, 452 F. Supp. 776 (M.D.N.C. 1978).

**Standard for judicial review of fact-gathering hearing. —** Where a hearing on the establishment of a branch bank was held and the hearing was merely to gather facts, that is a fact gathering procedure, the standard of review is the lesser arbitrary and capricious test. *Security Bank & Trust Co. v. Heimann*, 452 F. Supp. 776 (M.D.N.C. 1978).

**If the Comptroller of the Currency followed the State law in determining if a branch bank could be opened, his decision must be affirmed unless it was arbitrary, capricious, or an abuse of discretion. Security Bank & Trust Co. v. Heimann**, 452 F. Supp. 776 (M.D.N.C. 1978).

**§ 53-77.1. Operation of banks on five-day week basis.**

(d) A bank operating on a five-day week under the provisions of this Article shall comply with the following provisions:

- (1) On one day of the week such bank shall remain open for not less than seven hours, three of which shall be after 3:00 P.M.
- (2) The bank shall remain open on each of the following State legal public holidays: Lee-Jackson Day, Washington's Birthday, Halifax Day, Confederate Memorial Day, Mecklenburg Declaration of Independence Day, Columbus Day, Veteran's Day, and Election Day, unless such holiday falls on the day on which said bank is otherwise closed under the provisions of this section.

(1977, c. 99, s. 1.)

**Cross Reference.** — As to legal banking holidays, see § 53-77.2A.

**Editor's Note.** — The 1977 amendment, in subdivision (2) of subsection (d), inserted "legal public" preceding "holidays" in the introductory language, and in the list of holidays, inserted

"Washington's Birthday" and substituted "Columbus Day, Veteran's Day" for "Memorial Day."

As the rest of the section was not changed by the amendment, only subsection (d) is set out.

**§ 53-77.2A. Legal banking holidays.** — (a) Any bank, as defined by G.S. 53-1 or G.S. 53-136, including national banking associations and federal reserve banks, or any branch or office of any of the foregoing located in this State, which operates on a five-day week basis, may observe as legal banking holidays the following:

- (1) New Year's Day, January 1;
- (2) Monday, January 2, when January 1 (New Year's Day) falls on a Sunday;
- (3) Monday, January 3, when January 1 (New Year's Day) falls on a Saturday;
- (4) Easter Monday;
- (5) Memorial Day, the last Monday in May;
- (6) Independence Day, July 4;
- (7) Monday, July 5, when July 4 (Independence Day) falls on a Sunday;
- (8) Monday, July 6, when July 4 (Independence Day) falls on a Saturday;
- (9) Labor Day, the first Monday in September;
- (10) Thanksgiving Day, the fourth Thursday in November;
- (11) Christmas Day, December 25;
- (12) December 26;
- (13) Monday, December 27, when December 25 (Christmas Day) falls on a Saturday.

(b) Any banking institution as hereinabove defined, operating on a six-day week basis, may, in addition to the above-named legal banking holidays, observe all other legal public holidays designated by G.S. 103-4.

(c) Notwithstanding subsections (a) and (b), any banking institution as hereinabove defined, whether operating on a five-day or six-day week basis may remain open on any legal holiday that it may observe as set forth above by notifying the Commissioner of Banks, in writing, 30 days prior to the legal holiday on which it wishes to remain open. (1977, c. 99, s. 2.)

## ARTICLE 7.

*Officers and Directors.*

**§ 53-80. Qualifications of directors.** — Every director of a bank doing business under this Chapter shall be the owner and holder of shares of stock in the bank representing not less than one thousand dollars (\$1,000) book value as of the last business day of the calendar year immediately prior to the election of such director. For the purpose of this section, book value shall consist of common capital stock, unimpaired surplus, undivided profits, and reserves for contingencies if any such reserves are segregations of capital. Where directors are appointed during the interval between stockholders' meetings pursuant to the provisions of G.S. 53-67, such directors shall hold the required qualifying shares as of the time of their appointment. Where the bank is a wholly owned subsidiary, the required qualifying shares shall be shares in the parent corporation. And every such director shall hold such shares in his own name unpledged and unencumbered in any way. The office of any director at any time violating any of the provisions of this section shall immediately become vacant, and the remaining directors shall declare his office vacant and proceed to fill such vacancy forthwith. Not less than three fourths of the directors of every bank doing business under this Chapter shall be residents of the State of North Carolina: Provided, that as to banks doing business before February 18, 1921, the requirements as to amount of stock owned by a director shall not apply unless the Commissioner of Banks shall rule that such director is not bona fide discharging his duties. (1921, c. 4, s. 51; C.S., s. 221(c); 1931, c. 243, s. 5; 1979, c. 483, s. 8.)

**Editor's Note.** — The 1979 amendment substituted "representing not less than one thousand dollars (\$1,000) book value as of the last business day of the calendar year immediately prior to the election of such director" for "having a par value of not less than five hundred dollars (\$500.00), provided such

bank shall have a capital stock of more than fifteen thousand dollars (\$15,000), and not less than two hundred dollars (\$200.00), and such bank shall have a capital stock of fifteen thousand dollars (\$15,000) or less" at the end of the first sentence and added the second, third, and fourth sentences.

**§ 53-91. When officers and employees may borrow.** — (a) No officer or employee of a bank, nor a firm or partnership of which such officer or employee is a member, nor a corporation in which such officer or employee owns a controlling interest, shall borrow any amount whatever from the bank of which he is an officer or employee, except upon good collateral or other ample security or endorsement, and except upon prior approval by the bank's executive or loan committee appointed pursuant to G.S. 53-78.

(b) In addition, a certified copy of a resolution approving any loan made pursuant to this section, duly adopted by a majority of the board of directors and entered upon the minutes, including the names of the directors approving the resolution, shall be maintained in the office in which the indebtedness is housed and shall set forth the amount of the loan and a brief description of the security upon which the loan is made. The resolution approving such loan may be adopted by the board of directors either at a regular or special meeting held prior to the making of the loan, or at the next regular or special meeting held following the making of the loan: Provided, the resolution approving such loan shall be adopted by the board of directors prior to the extension of credit or the making of any loan to an executive officer who has authority to participate in major policy-making functions of the bank, otherwise than in the capacity of a director, where such extension of credit or loan would exceed twenty-five thousand dollars (\$25,000).

(c) Collateral or other security is not required with respect to a loan or loans made to an individual pursuant to this section when the total amount of such loan or loans, in the aggregate, do not exceed five thousand dollars (\$5,000).

(d) In no event shall loans the total of which exceeds one hundred thousand dollars (\$100,000) be made by any bank to any officer or employee of such bank.

(e) This section shall not apply to directors who are neither officers nor employees of the bank. (1921, c. 4, s. 62; C.S., s. 221(n); 1925, c. 119, s. 2; 1927, c. 47, s. 12; 1967, c. 789, s. 15; 1969, c. 41; 1979, c. 483, s. 9.)

**Editor's Note.** — The 1979 amendment rewrote this section.

## ARTICLE 8.

### *Commissioner of Banks and State Banking Commission.*

**§ 53-92. Appointment of Commissioner of Banks; State Banking Commission.** — On or before April 1, 1931, after the ratification of this section, and quadrennially thereafter, the Governor, with the advice and consent of the Senate, shall appoint a Commissioner of Banks who shall hold his office for a term of four years or until his successor has been appointed and has qualified, subject, however, to the provisions herein made as to his removal. The Commissioner of Banks shall, before entering upon the discharge of his duties, enter into bond with some surety company authorized to do business in the State of North Carolina, in the sum of not less than fifty thousand dollars (\$50,000), conditioned upon the faithful and honest discharge of all duties and obligations imposed by statute upon him. Such bond shall be made as part of the blanket bond of State officers and employees provided for in G.S. 128-8.

The State Banking Commission, which has heretofore been created, shall hereafter consist of the State Treasurer, who shall serve as an ex officio member thereof, and 12 members who shall be appointed by the Governor. At least five members of the said commission shall be practical bankers, and the remaining seven members of the commission shall be selected primarily as representatives of the borrowing public and shall not be employees or directors of any financial institution nor shall they have any interest in any regulated financial institution other than as a result of being a depositor or borrower. Under this section, no person shall be considered to have an interest in a financial institution whose interest in any financial institution does not exceed one-half of one percent ( $\frac{1}{2}$  of 1%) of the capital stock of that financial institution. These seven members of the commission shall be selected so as to fully represent the consumer, industrial, manufacturing, professional, business and farming interests of the State. In the event that the composition of the commission does not conform to that prescribed in the three preceding sentences on April 30, 1979, such composition shall be corrected thereafter by appropriate appointments as terms expire and as vacancies occur in the commission; provided that no person shall serve on the commission for more than two complete consecutive terms. As the terms of office of the appointive members of the Commission expire, their successors shall be appointed by the Governor for terms of four years each. Any vacancy occurring in the membership of the Commission shall be filled by the Governor for the unexpired term. The appointive members of said Commission shall be filled by the Governor for the unexpired term. The appointive members of said Commission shall receive as compensation for their services the same per diem and expenses as is paid to the members of the Advisory Budget Commission, which compensation shall be paid from the fees collected from the examination of banks as provided by law.

The Banking Commission shall meet at such time or times, and not less than once every three months, as the Commission shall, by resolution, prescribe, and the Commission may be convened in special session at the call of the Governor, or upon the request of the Commissioner of Banks. The State Treasurer shall be chairman of the said Commission.

No member of said Commission shall act in any matter affecting any bank in which he is financially interested, or with which he is in any manner connected. No member of said Commission shall divulge or make use of any information coming into his possession as a result of his service on such Commission, and shall not give out any information with reference to any facts coming into his possession by reason of his services on such Commission in connection with the condition of any State banking institution, unless such information shall be required of him at any hearing at which he is duly subpoenaed, or when required by order of a court of competent jurisdiction.

The Commissioner of Banks shall act as the executive officer of the Banking Commission, but the Commission shall provide, by rules and regulations, for hearings before the Commission upon any matter or thing which may arise in connection with the banking laws of this State upon the request of any person interested therein, and review any action taken or done by the Commissioner of Banks.

The Banking Commission is hereby vested with full power and authority to supervise, direct and review the exercise by the Commissioner of Banks of all powers, duties, and functions now vested in or exercised by the Commissioner of Banks under the banking laws of this State; any party to a proceeding before the Banking Commission may, within 20 days after final order of said Commission and by written notice to the Commissioner of Banks, appeal to the Superior Court of Wake County for a final determination of any question of law which may be involved. The cause shall be entitled "State of North Carolina on Relation of the Banking Commission against (here insert name of appellant)." It shall be placed on the civil issue docket of such court and shall have precedence over other civil actions. In the event of an appeal the Commissioner shall certify the record to the clerk of Superior Court of Wake County within 15 days thereafter. (1931, c. 243, s. 1; 1935, c. 266; 1939, c. 91, s. 1; 1949, c. 372; 1953, c. 1209, ss. 4, 6; 1961, c. 547, s. 2; 1967, c. 789, s. 16; 1969, c. 844, s. 6; c. 920; 1979, c. 478, s. 1.)

**Editor's Note.** — The 1979 amendment rewrote the second paragraph.

Cited in *North Carolina Nat'l Bank v. Harwell*, 38 N.C. App. 190, 247 S.E.2d 720 (1978).

**§ 53-99. Official records.** — (a) The Commissioner of Banks shall keep a record in his office of his official acts, rulings, and transactions which, except as hereinafter provided, shall be open to inspection, examination and copying by any person.

(b) Notwithstanding any laws to the contrary, the following records of the Commissioner of Banks shall be confidential and shall not be disclosed or be subject to public inspection:

- (1) Records compiled during or in connection with an examination, audit or investigation of any bank, banking office or trust department operating under the provisions of this Chapter;
- (2) Records containing information compiled in preparation or anticipation of litigation, examination, audit or investigation;
- (3) Records containing the names of any borrowers from a bank or revealing the collateral given by any such borrower: Provided, however, that every report of insider transactions made by a bank which report is required to be filed with the appropriate State or federal regulatory agency by either State or federal statute or regulation shall

be filed with the Commissioner of Banks in a form prescribed by him and shall be open to inspection, examination and copying by any person;

- (4) Records prepared during or as a result of an examination, audit or investigation of any bank, bank affiliate, data service center or banking practice by an agency of the United States, or jointly by such agency and the Commissioner of Banks, if such records would be confidential under federal law or regulation;
- (5) Records of information and reports submitted by banks to federal regulatory agencies, if such records would be confidential under federal law or regulation;
- (6) Records of complaints from the public received by the banking department and concerning banks under its supervision if such complaints would or could result in an investigation;
- (7) Records of examinations and investigations of consumer finance licensees;
- (8) Records of pre-need burial contracts maintained pursuant to Article 7A of Chapter 65 of the General Statutes including investigations of such contracts and related credit inquiries;
- (9) Any letters, reports, memoranda, recordings, charts, or other documents which would disclose any information set forth in any of the confidential records referred to in subdivisions (1) through (8). (1931, c. 243, s. 10; 1977, 2nd Sess., c. 1181, s. 2; 1979, c. 255, s. 1.)

**Editor's Note.** — The 1977, 2nd Sess., amendment rewrote this section.

The 1979 amendment added the words following "transactions" in subsection (a). In subsection (b), the amendment inserted "or in connection with" after "during" in subdivision (1), added "examination, audit or investigation" at the end of subdivision (2), changed the period to a colon after "borrower" and added the rest of subdivision (3), inserted "bank affiliate, data service center" near the middle of subdivision (4)

and deleted "any" preceding "federal" near the end of subdivision (4), added subdivisions (5) through (8), redesignated former subdivision (5) as subdivision (9), and substituted "(8)" for "(4)" at the end of subdivision (9).

Session Laws 1977, 2nd Sess., c. 1181, s. 4, originally provided that the act should expire on June 30, 1979 unless repealed by the General Assembly prior thereto. The provision for expiration was eliminated by Session Laws 1979, c. 255, s. 2.

**§ 53-104. Commissioner of Banks shall have supervision over, etc.** — Every bank or corporation transacting the business of banking, or doing a banking business in connection with any other business, under the laws of and within this State, and any individual, partnership, association, or corporation which undertakes or attempts to transact the business of banking, or do a banking business in connection with any other business, shall be under the supervision of the Commissioner of Banks. It shall be his duty to execute and enforce through the State bank examiners and such other agents as are now or may hereafter be created or appointed, all laws which are now or may hereafter be enacted relating to banks as defined in this Chapter. For the more complete and thorough enforcement of the provisions of this Chapter, the State Banking Commission is hereby empowered to promulgate such rules not inconsistent with the provisions of this Chapter, as may, in its opinion, be necessary to carry out the provisions of the laws relating to banks and banking as herein defined, and as may be further necessary to insure safe and conservative management of the banks under its supervision taking into consideration the appropriate interest of the depositors, creditors, stockholders, and the public in their relations with such banks. All banks doing business under the provisions of this Chapter shall conduct their business in a manner consistent with all laws relating to banks and banking, and all rules, regulations, and instructions that may be promulgated or issued by the State Banking Commission. (1921, c. 4, s. 63; C.S., s. 222(a); 1931, c. 243, s. 5; 1939, c. 91, s. 2; 1945, c. 743, s. 1; 1979, c. 483, s. 10.)

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**§ 53-104.1**

**1979 CUMULATIVE SUPPLEMENT**

**§ 53-107**

**Editor's Note.** —

The 1979 amendment deleted "regulations, and instructions," after "rules" near the middle of the third sentence, and deleted "such" preceding "safe," substituted "taking into

consideration the appropriate interest of the depositors" for "as will provide adequate protection for the interests of the depositories" and added "the" preceding "public" near the end of that sentence.

**§ 53-104.1. Examination of nonbanking affiliates.** — The Commissioner of Banks, at his discretion, may examine the affiliates of a bank doing business under this Chapter to the extent it is necessary to safeguard the interest of depositors and creditors of the bank and of the general public, and to enforce the provisions of this Chapter. The Commissioner may conduct the examination in conjunction with any examination of the bank or affiliate conducted by any other state or federal regulatory authority. For the purpose of this section, the word "affiliate" means any bank holding company of which the bank is a subsidiary and any nonbanking subsidiary of that bank holding company, as "subsidiary" is defined by Section 2 of the Federal Bank Holding Company Act of 1956 (12 U.S.C. Sec. 1841(d), as amended). (1979, c. 483, s. 11.)

**§ 53-105. Reports of condition.** — Every bank shall make to the Commissioner of Banks not less than three reports during each year, according to the form which may be prescribed by said Commissioner of Banks; which report shall be verified by the oath or affirmation of the president, vice-president, cashier, secretary, or treasurer of said bank, and in addition thereto, two of the directors. Each such report shall exhibit in detail and under appropriate heads the resources, assets, and liabilities of such bank at the close of business on any past day by the Commissioner of Banks specified, and shall be transmitted to the Commissioner of Banks within 10 days after the receipt of a request or requisition therefor from the Commissioner of Banks; provided, however, the Commissioner of Banks may extend the time for a period not to exceed 30 days for any bank to transmit the reports heretofore required whenever in his judgment such extension is necessary; and in a form prescribed by the Commissioner of Banks; a summary of such report shall be published in a newspaper published in the place where the bank is located, or if there is no newspaper in the place, then in the nearest one published thereto in the county in which such bank is established. Proof of such publication shall be furnished the Commissioner of Banks in such form as may be prescribed by him. (1921, c. 4, s. 64; 1923, c. 148, s. 2; C.S., s. 222(b); 1931, c. 243, s. 5; 1979, c. 483, s. 12.)

**Editor's Note.** — The 1979 amendment inserted the proviso near the middle of this section.

**§ 53-107. Penalty for failure to make report.** — Every bank failing to make and transmit any report which the Commissioner of Banks is authorized to require by this Chapter, and in and according to the form prescribed by said Commissioner of Banks, within 10 days after the receipt of a request or requisition therefor, or within the extension of time granted by the Commissioner of Banks heretofore provided or failing to publish the reports as required, shall forthwith be notified by the Commissioner of Banks, and if such failure continue for five days after the receipt of such notice, such delinquent bank shall be subject to a penalty of two hundred dollars (\$200.00). The penalty herein provided for shall be recovered in a civil action in any court of competent jurisdiction, and it shall be the duty of the Attorney General to prosecute all such actions. (1921, c. 4, s. 67; C.S., s. 222(e); 1931, c. 243, s. 5; 1979, c. 483, s. 13.)

**Editor's Note.** — The 1979 amendment inserted "or within the extension of time granted by the Commissioner of Banks heretofore provided" near the middle of the first sentence.

**§ 53-108. List of stockholders to be kept.** — Every bank doing business under this Chapter shall at all times keep a correct record of the names of all its stockholders and whenever called upon by the Commissioner of Banks or his duly authorized agent, make available for examination a correct list of all its stockholders, the resident address of each, and the number of shares held by each. Whenever the word "stockholders" is used in this section, the same shall be deemed to include, to the extent available, stockholders of any corporations which own ten percent (10%) or more of the capital stock of any bank doing business under this Chapter or a lesser amount when required by the Commissioner. (1921, c. 4, s. 68; C.S., s. 222(f); 1931, c. 243, s. 5; 1979, c. 483, s. 14.)

**Editor's Note.** — The 1979 amendment deleted "once in each year, or" preceding "whenever called" and substituted "by the Commissioner of Banks or his duly authorized

agent, make available for examination" for "file in the office of the Commissioner of Banks" near the middle of the first sentence and added the second sentence.

**§ 53-115. State Banking Commission to make rules and regulations.** — The State Banking Commission is hereby authorized, empowered and directed to make all necessary rules and regulations, and to give all necessary instructions with respect to such actions of banking corporations which the Commissioner of Banks may authorize, permit and/or direct and require to be conducted under the provisions of G.S. 53-77, 53-114, 53-115, and 53-116. And it shall be the duty of all such banking corporations and their officers, agents and employees, to comply fully with any and all such rules, regulations and instructions, established and promulgated by the State Banking Commission with respect to such banking corporations under the terms of G.S. 53-77, 53-114, 53-115, and 53-116; and such orders, rules, and regulations shall have the same force and effect as rules, regulations and instructions promulgated under the existing banking laws. (1933, c. 120, s. 4; 1939, c. 91, s. 2; 1979, c. 483, s. 15.)

**Editor's Note.** — The 1979 amendment inserted "actions of" near the middle of the first sentence.

## ARTICLE 9.

### *Bank Examiners.*

**§ 53-117. Appointment by Commissioner of Banks; examination of banks.** — (a) The Commissioner of Banks, for the purpose of carrying out the provisions of this Chapter, shall appoint from time to time such State bank examiners, assistant State bank examiners, clerks and stenographers as may be necessary to examine the affairs of every bank doing business under this Chapter as often as the Commissioner of Banks shall deem necessary, and at least once every year; but the Commissioner may extend this period to 18 months when, in his opinion, an emergency condition exists that necessitates such action. The Commissioner of Banks may, at any time, remove any person appointed by him under this Chapter.

(b) The State Banking Commission shall adopt rules and regulations to implement the provisions of this Chapter, prescribing the nature and scope of examination of banks.

(c) The Commissioner of Banks is authorized to accept, in his discretion, as a part of a bank examination, reports on audits conducted in accordance with generally accepted auditing standards by independent accountants, when such reports contain an opinion by the independent accountant on the fairness of presentation of the financial statements and present information required by the rules and regulations of the State Banking Commission. No report of an audit of any bank shall be acceptable under this subsection if such audit was made by a person, firm or corporation who is a director, officer or employee of a bank or has a financial interest, other than as a depositor or obligor upon a fully collateralized loan, in the bank which is the subject of the audit.

(d) In the case of a bank which is a member of the Federal Reserve System or in the case of a bank whose deposits are insured by the Federal Deposit Insurance Corporation, the Commissioner of Banks is authorized to accept, in his discretion, as a part of the examinations prescribed in subsection (b) of this section, examinations and reports made pursuant to the Federal Reserve Act or the Federal Deposit Insurance Corporation Act. (1921, c. 4, s. 72; C. S., s. 223(a); 1931, c. 243, s. 5; 1967, c. 789, s. 17; 1977, c. 684, s. 1; 1977, 2nd Sess., c. 1181, s. 1.)

**Editor's Note. —**

The 1977 amendment, effective July 1, 1977, in the first sentence, deleted "and into" preceding "the affairs of every bank" and substituted "18 months" for "15 months."

The 1977, 2nd Sess., amendment designated the former provisions of this section as subsection (a) and added subsections (b), (c) and (d). The amendment also substituted "to examine" for "to make a thorough examination of and into," "shall" for "may" preceding "deem

necessary" and "every" for "each" preceding "year" and made other minor changes in wording in the first sentence of subsection (a).

Session Laws 1977, 2nd Sess., c. 1181, s. 4, originally provided that the act should expire on June 30, 1979, unless repealed by the General Assembly prior thereto. The provision for expiration was eliminated by Session Laws 1979, c. 255, s. 2.

**§ 53-122. Fees for examinations and other services. —** For the purpose of paying the salaries and necessary traveling expenses of the Commissioner of Banks, State bank examiners, assistant State bank examiners, clerks, stenographers and other employees of the Commissioner of Banks, the following fees shall be paid into the office of the Commissioner of Banks:

- (1) Each bank and each branch of any bank which under the laws of the State of North Carolina is subject to supervision and examination by the Commissioner of Banks and is authorized to do business or is in process of voluntary liquidation, shall, within 10 days after the assessment has been made, pay into the office of the Commissioner of Banks according to its total resources as shown by its report of condition made to the Commissioner of Banks at the close of business December 31, 1978, and on the thirty-first day of December, or the date most nearly approximating same of each year thereafter on which a report of condition is made to the Commissioner of Banks not in excess of the following fees for its annual examination: eighty-five dollars (\$85.00) for the first one hundred thousand dollars (\$100,000) of assets or less, twelve dollars (\$12.00) for each one hundred thousand dollars (\$100,000) or fraction in excess thereof, and three dollars and fifty cents (\$3.50) for each one hundred thousand dollars (\$100,000) or fraction thereof of trust assets, which said trust assets shall not include real estate carried as such; provided, however, with respect to loan agencies or brokers subject to the provisions of Article 15 of Chapter 53 of the General Statutes, the fee shall be one hundred seventy dollars (\$170.00) for the first one hundred thousand dollars (\$100,000) of assets or less, and twelve dollars (\$12.00) for each one hundred thousand dollars (\$100,000) or fraction in excess thereof.

- (2) All examinations made other than those provided for in subdivision (1) hereof shall be deemed special examinations and for such special examination the bank shall pay into the office of the Commissioner of Banks the following fees for each special examination: eighty-five dollars (\$85.00) for the first one hundred thousand dollars (\$100,000) of assets or less, twelve dollars (\$12.00) for each one hundred thousand dollars (\$100,000) or fraction in excess thereof, and three dollars and fifty cents (\$3.50) for each one hundred thousand dollars (\$100,000) or fraction thereof of trust assets, which said trust assets shall not include real estate carried as such; provided, however, with respect to loan agencies or brokers subject to the provisions of Article 15 of Chapter 53 of the General Statutes, the fee shall be one hundred seventy dollars (\$170.00) for the first one hundred thousand dollars (\$100,000) of assets or less, and twelve dollars (\$12.00) for each one hundred thousand dollars (\$100,000) or fraction in excess thereof. The fees paid for special examination shall be based on the assets of the bank examined as of the date of such examination.

(1979, c. 483, s. 1.)

**Editor's Note.** — The 1979 amendment substituted "December 31, 1978" for "December 31, 1926" near the middle of subdivision (1) and, in the fee provisions in subdivision (1) and the first sentence of subdivision (2), substituted "eighty-five dollars (\$85.00)" for "fifty dollars (\$50.00)," "twelve dollars (\$12.00)" for "seven dollars (\$7.00)," "three dollars and fifty cents

(\$3.50)" for "two dollars (\$2.00)," "one hundred seventy dollars (\$170.00)" for "one hundred dollars (\$100.00)" and added "and twelve dollars (\$12.00) for each one hundred thousand dollars (\$100,000) or fraction in excess thereof."

As the rest of the section was not changed by the amendment, only the introductory material and subdivisions (1) and (2) are set out.

## ARTICLE 10.

### *Penalties.*

#### **§ 53-129. Misapplication, embezzlement of funds, etc.**

**Cross Reference.** — For statute providing the maximum punishment for felonies, effective July 1, 1980, see § 14-1.1.

**Amendment Effective July 1, 1980.** — Session Laws 1979, c. 760, s. 5, effective July 1, 1980, will amend this section to read as follows:

**"§ 53-129. Misapplication, embezzlement of funds, etc.** — Whoever being an officer, employee, agent or director of a bank, with intent to defraud or injure the bank, or any person or corporation, or to deceive an officer of the bank or an agent appointed to examine the affairs of such bank, embezzles, abstracts, or misapplies any of the money, funds, credit or property of such bank, whether owned by it or held in trust, or who, with such intent, wilfully and fraudulently issues or puts forth a certificate of deposit, draws an order or bill of exchange, makes an acceptance, assigns a note, bond, draft, bill of exchange, mortgage, judgment, decree or fictitiously borrows or solicits, obtains or receives money for a bank not in good faith, intended to become the property of such bank; or whoever being an officer,

employee, agent, or director of a bank, makes or permits the making of a false statement or certificate, as to a deposit, trust fund or contract, or makes or permits to be made a false entry in a book, report, statement or record of such bank, or conceals or permits to be concealed by any means or manner, the true and correct entries of said bank, or its true and correct transactions, who knowingly loans, or permits to be loaned, the funds or credit of any bank to any insolvent company or corporation, or corporation which has ceased to exist, or which never had any existence, or upon collateral consisting of stocks or bonds of such company or corporation, or who makes or publishes or knowingly permits to be made or published a false report, statement or certificate as to the true financial condition of such bank, shall be punished as a Class E felon."

Session Laws 1979, c. 760, s. 6, provides: "This act shall become effective on July 1, 1980, and shall apply only to offenses committed on or after that date, unless specific language of the act indicates otherwise."

## ARTICLE 13.

*Conservation of Bank Assets and Issuance of Preferred Stock.*

**§ 53-154. Issuance of preferred stock.** — Notwithstanding any other provision of this Article or any other law, and notwithstanding any of the provisions of its articles of incorporation or bylaws, any bank may, with the approval of the Commissioner of Banks, and by vote of stockholders owning a majority of the stock of such bank, upon not less than two days' notice given by registered mail pursuant to action taken at a meeting of its board of directors (which may be held upon not less than one day's notice) issue preferred stock in such amount and with such par value and at such annual dividend rate as shall be approved by said Commissioner of Banks. A copy of the minutes of such directors' and stockholders' meetings, certified by the proper officer and under the corporate seal of the bank, and accompanied by the written approval of the Commissioner of Banks shall be immediately filed in the office of the Secretary of State, and when so filed, shall be deemed and treated as an amendment to the articles of incorporation of such bank.

No issue of preferred stock shall be valid until the par value of all stock so issued shall have been paid for in full in cash or in such manner as may be specifically approved by the Commissioner of Banks. (1933, c. 155, s. 7; 1979, c. 483, s. 16.)

**Editor's Note.** — The 1979 amendment inserted "and at such annual dividend rate" near the end of the first sentence in the first paragraph.

**§ 53-155. Rights and liabilities of preferred stockholders.** — The holders of such preferred stock shall be entitled to cumulative dividends payable at an annual rate approved by the Commissioner of Banks, but shall not be held individually responsible as such holders for any debts, contracts or engagements of such bank, and shall not be liable for assessments to restore impairments in the capital of such banks as now provided by law with reference to holders of common stock in banks. Notwithstanding any other provisions of law, the holders of such preferred stock shall have such voting rights and such stock shall be subject to retirement in such manner and on such terms and conditions as may be provided in the articles of incorporation or any amendment thereto, with the approval of the Commissioner of Banks.

No dividends shall be declared or paid on common stock until the cumulative dividends on the preferred stock shall have been paid in full; and if the bank is placed in liquidation, no payments shall be made to the holders of the common stock until the holders of the preferred stock shall have been paid in full the par value of such stock and all accumulated dividends. (1933, c. 155, s. 8; 1979, c. 483, s. 17.)

**Editor's Note.** — The 1979 amendment substituted "an annual rate approved by the Commissioner of Banks" for "a rate not exceeding six percent (6%) per annum" near the beginning of the first sentence of the first paragraph.

**§ 53-156. Term "stock" to include preferred stock.** — Whenever in existing banking law, the words "stock," "stockholders," "capital," or "capital stock" are used, the same shall be deemed to include preferred stock: Provided, that no bank issuing preferred stock under the provisions hereof, shall be permitted at any time to make loans secured by such preferred stock; provided further that such words shall not be deemed to include preferred stock where they are used in G.S. 53-2, 53-10, 53-80, 53-87, 53-88 and 53-139. (1933, c. 155, s. 9; 1935, c. 80; 1953, c. 675, s. 5; 1979, c. 483, s. 18.)

**Editor's Note.** — The 1979 amendment substituted "Whenever" for "Wherever" at the beginning of the section, deleted "not" after "the same shall" near the beginning of the section, substituted "secured by such" for "upon such" near the middle of the section, and substituted "that such word shall not be deemed to include preferred stock where they are used

in G.S. 53-2, 53-10, 53-80, 53-87, 53-88 and 53-139" for "that in determining whether or not the minimum capital or capital stock required in G.S. 53-2, 53-11, 53-62 and 53-139, has been supplied to such bank or banking corporation, the Commissioner of Banks shall include preferred stock as capital or capital stock" at the end of the section.

## ARTICLE 15.

### *North Carolina Consumer Finance Act.*

**§ 53-166. Scope of Article; evasions; penalties; loans in violation of Article void.** — (a) Scope. — No person shall engage in the business of lending in amounts of three thousand dollars (\$3,000) or less and contract for, exact, or receive, directly or indirectly, on or in connection with any such loan, any charges whether for interest, compensation, consideration, or expense, or any other purpose whatsoever, which in the aggregate are greater than permitted by Chapter 24, except as provided in and authorized by this Article, and without first having obtained a license from the Commissioner. The word "lending" as used in this section, shall include, but shall not be limited to, endorsing or otherwise securing loans or contracts for the repayment of loans.

(1979, c. 33, s. 1.)

**Editor's Note.** —

The 1979 amendment substituted "three thousand dollars (\$3,000)" for "fifteen hundred dollars (\$1,500)" near the beginning of the first sentence of subsection (a).

As subsections (b), (c), and (d) were not changed by the amendment, they are not set out.

**Applied** in *In re Dickson*, 432 F. Supp. 752 (W.D.N.C. 1977).

**§ 53-173. Maximum rate of charge; computation of charges; limitation on interest after judgment; limitation on interest after maturity of the loan; inapplicability of other sections.** — (a) Maximum Rate of Charge. — Every licensee hereunder may contract for, compute, and receive on any loan of money, not exceeding three thousand dollars (\$3,000) in amount, charges at rates not exceeding three percent (3%) per month on that part of the unpaid principal balance of any loan not in excess of three hundred dollars (\$300.00) and one and one-half percent (1½%) per month on any remainder of such unpaid principal balance.

(1975, c. 110, s. 1; 1979, c. 33, s. 2.)

**Editor's Note.** —

The 1975 amendment substituted "three percent (3%)" for "two and one-half percent (2½%)" near the middle of subsection (a). The amendatory act was ratified April 7, 1975, and made effective 30 days after ratification.

The 1979 amendment substituted "three thousand dollars (\$3,000)" for "fifteen hundred dollars (\$1,500)" near the middle of subsection (a).

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

### **§ 53-173.2: Repealed by Session Laws 1975, c. 110, s. 2.**

**Editor's Note.** — Session Laws 1975, c. 110, s. 3, provides that the act shall become effective 30

days after ratification. The act was ratified April 7, 1975.

**§ 53-174. Refund.**

Stated in *In re Dickson*, 432 F. Supp. 752 (W.D.N.C. 1977).

**§ 53-177. Recording fees.**

**Purpose of charge for nonfiling.** — The purpose of the 60-cent charge for nonfiling insurance is to protect the lender, not the

borrower. *Mosley v. National Fin. Co.*, 36 N.C. App. 109, 243 S.E.2d 145 (1978).

**§ 53-180. Limitations and prohibitions on practices and agreements.** — (a) Time and Payment Limitation. — Except as otherwise provided in this Article, no licensee making a loan pursuant to G.S. 53-173 shall enter into any contract of loan under this Article providing for any scheduled repayment of principal more than 25 months from the date of making the contract if the cash advance is six hundred dollars (\$600.00) or less; more than 37 months from the date of making the contract if the cash advance is in excess of six hundred dollars (\$600.00) but not in excess of fifteen hundred dollars (\$1,500); more than 49 months from the date of making the contract if the cash advance is in excess of fifteen hundred dollars (\$1,500) but not in excess of two thousand five hundred dollars (\$2,500); or more than 61 months if the cash advance is in excess of two thousand five hundred dollars (\$2,500). Every loan contract shall provide for repayment of the amount loaned in substantially equal installments, either of principal or of principal and charges in the aggregate, at approximately equal periodic intervals of time. Nothing contained herein shall prevent a loan being considered a new loan because the proceeds of the loan are used to pay an existing contract.

(1979, c. 33, s. 3.)

*SOURCE TO*

**Editor's Note.** —

The 1979 amendment deleted "nor" preceding "more than 37 months" near the middle of the first sentence of subsection (a) and added to that sentence the language beginning "but not in excess of fifteen hundred dollars (\$1,500)."

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

Selling credit insurance at inflated premiums, receiving a 25% commission, and failing to disclose these facts, while in a fiduciary relationship with the borrower, constitutes an unfair and deceptive trade practice within the meaning of this section. *In re Dickson*, 432 F. Supp. 752 (W.D.N.C. 1977).

**§ 53-188. Review of regulations, order or act of Commission or Commissioner.****Editor's Note.** —

Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the

effective date of the 1973 act from July 1, 1975, to Feb. 1, 1976.

**§ 53-189. Insurance.** — (a) Credit life and credit accident and health insurance may be written in accordance with the provisions of "The North Carolina Act for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance."

(b) The premium or cost of credit life, credit accident and health or property insurance, when written by or through any lender or other creditor, its affiliate, associate or subsidiary shall not be deemed as interest or charges or consideration or an amount in excess of permitted charges in connection with the loan or credit transaction and any gain or advantage to any lender or other

creditor, its affiliate, associate or subsidiary, arising out of the premium or commission or dividend from the sale or provision of such insurance shall not be deemed a violation of any other law, general or special, civil or criminal, of this State, or of any rule, regulation or order issued by any regulatory authority of this State. (1961, c. 1053, s. 1; 1969, c. 1303, s. 25; 1975, c. 660, s. 2.)

**Cross Reference.** — For the North Carolina Act for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance, see § 58-341 et seq.

**Editor's Note.** — The 1975 amendment rewrote this section.

Session Laws 1975, c. 660, s. 3, contains a severability clause.

Session Laws 1975, c. 660, s. 5, provides: "The effective date of this act shall be 90 days after ratification. All credit life and credit accident

and health insurance policies, delivered or issued for delivery on or after the effective date of this act shall conform to the provisions of this act. With regard to existing group credit insurance policies, the rates and forms shall be amended to conform to the requirements of this act, or be terminated, not later than the anniversary of the date of issue of the contract next following the effective date of this act." The act was ratified June 18, 1975.

**§ 53-190. Loans made elsewhere.** — (a) No loan contract made outside this State in the amount or of the value of three thousand dollars (\$3,000) or less, for which greater consideration or charges than are authorized by G.S. 53-173 of this Article have been charged, contracted for, or received, shall be enforced in this State. Provided, the foregoing shall not apply to loan contracts in which all contractual activities, including solicitation, discussion, negotiation, offer, acceptance, signing of documents, and delivery and receipt of funds, occur entirely outside North Carolina.

(b) If any lender or agent of a lender who makes loan contracts outside this State in the amount or of the value of three thousand dollars (\$3,000) or less, comes into this State to solicit or otherwise conduct activities in regard to such loan contracts, then such lender shall be subject to the requirements of this Article.

(c) No lender licensed to do business under this Article may collect, or cause to be collected, any loan made by a lender in another state to a borrower, who was a legal resident of North Carolina at the time the loan was made. The purchase of a loan account shall not alter this prohibition. (1961, c. 1053, s. 1; 1967, c. 769, s. 2; 1969, c. 1303, s. 13; 1973, c. 1042, s. 8; 1979, c. 706, s. 2.)

**Editor's Note.** —

The 1979 amendment, effective July 1, 1979, rewrote the former provisions of this section as subsections (a) and (c) and added subsection (b). In present subsection (a) the amendment substituted "three thousand dollars (\$3,000)" for "fifteen hundred dollars (\$1,500)" near the beginning of the first sentence, deleted "a" after "for which" near the middle of that sentence,

deleted "and every person in anywise participating therein in this State shall be subject to the provisions of this Article; provided, that the foregoing shall not apply to loans legally made in another state" at the end of that sentence, and added the second sentence. The former second and third sentences of the section were designated subsection (c).

**Chapter 53A.****Business Development Corporations.**

Sec.

53A-2. Incorporation authorized; information to be set forth; purposes; powers generally.

**§ 53A-2. Incorporation authorized; information to be set forth; purposes; powers generally.**

(b) Powers Generally. — In furtherance of such purposes and in addition to the powers conferred on business corporations by the provisions of Chapter 55 of the General Statutes the corporation shall, subject to the restrictions and limitations herein contained, have the following powers:

- (1) To elect, appoint and employ officers, agents and employees; to make contracts and incur liabilities for any of the purposes of the corporation; provided, that the corporation shall not incur any secondary liability by way of guaranty or endorsement of the obligations of any person, firm, corporation, joint-stock company, association or trust, or in any other manner.
- (2) To borrow money from the members, from any financial institution, and from any agency established under the Small Business Investment Act of 1958, Public Law 85-699 — 85th Congress, or other similar federal legislation, for any of the purposes of the corporation; to issue therefor its bonds, debentures, notes or other evidences of indebtedness, whether secured or unsecured, and to secure the same by mortgage, pledge, deed of trust or other lien on its property, franchises, rights and privileges of every kind and nature or any part thereof or interest therein, without securing stockholder or member approval; provided, that no loan to the corporation shall be secured in any manner unless all outstanding loans to the corporation shall be secured equally and ratably in proportion to the unpaid balance of such loans and in the same manner.
- (3) To make loans to any person, firm, corporation, joint-stock company, association or trust, and to establish and regulate the terms and conditions with respect to any such loans and the charges for interest and service connected therewith; provided, however, that the corporation shall not approve any application for a loan unless and until the person applying for said loan shall show that he has applied for the loan through ordinary banking channels and that the loan has been refused by at least one bank or other financial institution.
- (4) To purchase, receive, hold, lease, or otherwise acquire, and to sell, convey, transfer, lease or otherwise dispose of real and personal property, together with such rights and privileges as may be incidental and appurtenant thereto and the use thereof, including, but not restricted to, any real or personal property acquired by the corporation from time to time in the satisfaction of debts or enforcement of obligations.
- (5) To acquire the goodwill, business, rights, real and personal property, and other assets, or any part thereof, or interest therein, of any persons, firms, corporations, joint-stock companies, associations or trusts, and to assume, undertake, or pay the obligations, debts and liabilities of any such person, firm, corporation, joint-stock company, association or trust; to acquire improved or unimproved real estate for the purpose of constructing industrial plants or other business

establishments thereon or for the purpose of disposing of such real estate to others for the construction of industrial plants or other business establishments; and to transfer, lease, or otherwise dispose of industrial plants or business establishments.

- (6) To acquire, subscribe for, own, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the stock, shares, bonds, debentures, notes or other securities and evidences of interest in, or indebtedness of, any person, firm, corporation, joint-stock company, association or trust, and while the owner or holder thereof to exercise all the rights, powers and privileges of ownership, including the right to vote thereon.
- (7) To mortgage, pledge, or otherwise encumber any property, right or thing of value, acquired pursuant to the powers contained in subdivisions (4), (5) or (6) of this subsection, as security for the payment of any part of the purchase price thereof.
- (8) To cooperate with and avail itself of the facilities of the Department of Natural Resources and Community Development and any similar governmental agencies; and to cooperate with and assist, and otherwise encourage organizations in the various communities of the State in the promotion, assistance, and development of the business prosperity and economic welfare of such communities or of this State or of any part thereof.
- (9) To do all acts and things necessary or convenient to carry out the powers expressly granted in this Chapter. (1955, c. 1146, s. 2; 1959, c. 613, s. 1; 1973, c. 1262, s. 86; 1977, c. 771, s. 4.)

**Editor's Note. —**

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in subdivision (8) of subsection (b).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

As subsection (a) was not changed by the amendment, only subsection (b) is set out.

**Chapter 54.****Cooperative Organizations.****SUBCHAPTER I. BUILDING AND LOAN ASSOCIATIONS, BUILDING ASSOCIATIONS AND SAVINGS AND LOAN ASSOCIATIONS.****Article 1.**  
**Organization.**

Sec.

- 54-1. Application of terms.  
 54-2. Method of incorporation; powers.  
 54-12.1. Merger of building and loan associations.

**Article 2A.****Savings Accounts.**

- 54-18.6. Shares and deposits defined.

**Article 3.****Loans.**

- 54-19. Manner of making loans; security required.  
 54-20. Methods or plans of repayment of loans.  
 54-21.2. Investments.

**Article 4.****Under Control of Administrator of the Savings and Loan Division.**

- 54-24.1. Savings and Loan Commission.  
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 54-33.3. Certain powers granted to State associations.

**Article 7A.****Mutual Deposit Guaranty Associations.**

- 54-44.8. Powers of associations.  
 54-44.10. Administrator to control and supervise associations; rules and regulations; annual examination.  
 54-44.11. Special examinations or audits.  
 54-44.14. Removal of dishonest, incompetent, etc., officers or employees.

**SUBCHAPTER III. CREDIT UNIONS.****Article 9.****Credit Union Division; Administrator of Credit Unions.**

- 54-74 to 54-75.1. [Repealed.]

**Article 10.****Incorporation of Credit Unions.**

- Sec.  
 54-76 to 54-81. [Repealed.]

**Article 11.****Powers of Credit Unions.**

- 54-82 to 54-93. [Repealed.]

**Article 12.****Shares in the Corporation.**

- 54-94 to 54-97. [Repealed.]

**Article 13.****Members and Officers.**

- 54-98 to 54-104. [Repealed.]

**Article 14.****Supervision and Control.**

- 54-105 to 54-109. [Repealed.]

**Article 14A.****Formation of Credit Union.**

- 54-109.1. Definition and purposes.  
 54-109.2. Organization procedure.  
 54-109.3. Form of articles and bylaws.  
 54-109.4. Amendments.  
 54-109.5. Use of name exclusive.  
 54-109.6. Office facilities.  
 54-109.7 to 54-109.9. [Reserved.]

**Article 14B.****Supervision and Regulation.**

- 54-109.10. Creation and supervision of Division.  
 54-109.11. Duties of Administrator.  
 54-109.12. Corporations organized hereunder subject to Administrator of Credit Unions; rules and regulations.  
 54-109.13. Revocation of certificate; liquidation.  
 54-109.14. Fees.  
 54-109.15. Reports.  
 54-109.16. Annual examinations required; payment of cost.  
 54-109.17. Records.  
 54-109.18. Selection of attorneys to handle loan-closing proceedings.  
 54-109.19. Removal of officers.  
 54-109.20. [Reserved.]

**Article 14C.****Powers of Credit Union.**

- 54-109.21. General powers.  
 54-109.22. Incidental powers.  
 54-109.23 to 54-109.25. [Reserved.]

## GENERAL STATUTES OF NORTH CAROLINA

### **Article 14D.**

#### **Membership.**

Sec.

- 54-109.26. "Membership" defined.
- 54-109.27. Societies and other associations.
- 54-109.28. Other credit unions.
- 54-109.29. Members who leave field.
- 54-109.30. Liability of shareholders.
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### **Article 14E.**

#### **Direction of Affairs.**

- 54-109.35. Election or appointment of officials.
- 54-109.36. Record of board and committee members.
- 54-109.37. Vacancies.
- 54-109.38. Compensation of officials.
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- 54-109.40. Executive officers.
- 54-109.41. Authority of directors.
- 54-109.42. Executive committee.
- 54-109.43. Meetings of directors.
- 54-109.44. Duties of directors.
- 54-109.45. Authority of credit committee.
- 54-109.46. Meetings of credit committee.
- 54-109.47. Loan officers.
- 54-109.48. When credit committee dispensed with.
- 54-109.49. Duties of supervisory committee.
- 54-109.50 to 54-109.52. [Reserved.]

### **Article 14F.**

#### **Savings Accounts.**

- 54-109.53. Shares.
- 54-109.54. Dividends.
- 54-109.55. Deposits.
- 54-109.56. Thrift accounts.
- 54-109.57. Shares and deposits for minors and in trust.
- 54-109.58. Joint accounts.
- 54-109.59. Liens.
- 54-109.60. [Repealed.]
- 54-109.61. Reduction in shares.
- 54-109.62 to 54-109.64. [Reserved.]

### **Article 14G.**

#### **Loans.**

- 54-109.65. Purposes, terms and interest rate.
- 54-109.66. Application.
- 54-109.67. Loan limit.
- 54-109.68. Security.
- 54-109.69. Installments.
- 54-109.70. Line of credit.

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- 54-109.71. Other loan programs.
- 54-109.72 to 54-109.74. [Reserved.]

### **Article 14H.**

#### **Insurance and Group Purchasing.**

- 54-109.75. Insurance for members.
- 54-109.76. Liability insurance for officers.
- 54-109.77. Group purchasing.
- 54-109.78. Share and deposit insurance.
- 54-109.79 to 54-109.81. [Reserved.]

### **Article 14-I.**

#### **Investments.**

- 54-109.82. Investment of funds.
- 54-109.83 to 54-109.85. [Reserved.]

### **Article 14J.**

#### **Reserve Allocations.**

- 54-109.86. Transfers to regular reserve.
- 54-109.87. Use of regular reserve.
- 54-109.88. "Risk assets" defined.
- 54-109.89 to 54-109.91. [Reserved.]

### **Article 14K.**

#### **Change in Corporate Status.**

- 54-109.92. Suspension.
- 54-109.93. Liquidation.
- 54-109.94. Merger.
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- 54-109.96 to 54-109.98. [Reserved.]

### **Article 14L.**

#### **Taxation.**

- 54-109.99. Restriction of taxation.

### **Article 15.**

#### **Central Associations.**

- 54-110. Central association.

### **SUBCHAPTER V. MARKETING ASSOCIATIONS.**

### **Article 19.**

#### **Purpose and Organization.**

- 54-131. Who may organize.
- 54-134. Articles of incorporation.
- 54-136. Bylaws.

### **Article 20.**

#### **Members and Officers.**

- 54-146. Directors; election.

**SUBCHAPTER I. BUILDING AND LOAN ASSOCIATIONS,  
BUILDING ASSOCIATIONS AND SAVINGS  
AND LOAN ASSOCIATIONS.**

**ARTICLE 1.**

*Organization.*

**§ 54-1. Application of terms.** — (a) The terms "building and loan association" and "savings and loan association," as used in this Subchapter, shall apply to and include all corporations, companies, societies, or associations organized for the purpose of making loans to their members only, and of enabling their members to acquire real estate, make improvements thereon and remove encumbrances therefrom by the payment of money in periodical installments or principal sums, and for the accumulation of a fund to be returned to members who do not obtain advances for such purposes. It shall be unlawful for any corporation, company, society, or association doing business in this State not so conducted to use in its corporate name the terms "building and loan association," "building association" or "savings and loan association" or in any manner or device to hold itself out to the public as a building and loan association or savings and loan association. The terms "building and loan association" and "savings and loan association" in the General Statutes shall be interchangeable and the use of either shall be construed to include the other unless a different intention is expressly provided.

(b) The preceding subsection notwithstanding, a stock-owned savings and loan association organized under Chapter 54A shall be a "building and loan association" or "savings and loan association" as those terms are used in this Subchapter and the General Statutes. All the provisions of this Subchapter and of the General Statutes relating to building and loan associations or savings and loan associations shall apply to stock-owned savings and loan associations except as otherwise provided in Chapter 54A.

Stock-owned savings and loan associations may use the terms "building and loan association" and "savings and loan association" in their corporate names and said associations may hold themselves out to the public as building and loan associations or savings and loan associations subject to the requirements of G.S. 54A-10(b). Stock-owned savings and loan associations shall not hold themselves out to the public as mutual savings and loan associations. (1905, c. 435, s. 16; Rev., s. 3881; C. S., s. 5169, c. 178; 1977, c. 543, s. 2; 1979, c. 801, s. 14.)

**Editor's Note. —**

The 1977 amendment, effective July 1, 1977, designated the former provisions of this section as subsection (a) and added subsection (b).

The 1979 amendment, effective Jan. 1, 1980, with respect to the franchise taxes levied upon corporations pursuant to Article 3, Subchapter I, Chapter 105, and effective for taxable years

beginning on and after Jan. 1, 1979 for all other purposes, deleted the former last sentence of the first paragraph in subsection (b), which read "The corporation organized under the provisions of this Chapter shall be taxed as a business corporation organized under the provisions of Chapter 55."

**§ 54-2. Method of incorporation; powers.** — (a) It shall be lawful for any persons in any city, town or county of this State, under any name by them to be assumed, to associate for the purpose of organizing and establishing a homestead and building and loan association, and, being so associated, they shall, on complying with this Subchapter, be a body politic and corporate, and as such be capable in law to hold and dispose of property, both real and personal; may have and use a common seal; may choose a presiding and other officers; may enact bylaws for the regulation of the affairs of such corporation, and compel

the due observance of the same by fines and penalties; may sue and be sued, plead and be impleaded, answer and be answered in any court in this State, and do all acts necessary for the well ordering and good government of the affairs of such corporation, and shall exercise all and singular the powers incident to bodies politic and corporate: Provided, that before any such corporation shall be entitled to the privileges of this Subchapter it shall file with the register of deeds of the county where such corporation is designed to act a copy of the certificate of incorporation of such corporation, signed by at least seven members, to be recorded in the office of such register of deeds, and shall pay a tax of twenty-five dollars (\$25.00) to the register of deeds, which tax shall be paid over by the register of deeds to the treasurer of the county, to the use of the school fund of the county. The register of deeds shall certify a copy of the charter to the Administrator of the Savings and Loan Division. The register of deeds shall not issue or record the same until duly authorized to do so by the Administrator of the Savings and Loan Division as hereinafter provided.

(b) Upon receipt of a copy of the certificate of incorporation of the proposed association, the Administrator of the Savings and Loan Division shall at once examine into all the facts connected with the formation of such proposed corporation, including its location and proposed stockholders, and if it appears that such corporation, if formed, will be lawfully entitled to commence the business for which it is organized, the Administrator of the Savings and Loan Division shall so certify to the register of deeds in the county in which organized, who shall thereupon issue and record such certificate of incorporation. But the Administrator of the Savings and Loan Division may refuse to so certify, if upon examination and investigation he has reason to believe that the proposed corporation is formed for any purpose other than a mutual building and loan business, or that the character, general fitness, and responsibility of the persons proposed as stockholders in such corporation are not such as to command the confidence of the community in which said building and loan association is proposed to be located; or that there is not a reasonable demand and necessity in the community to be served by its establishment; or that the public convenience and advantage will not be promoted by its establishment; or that the name of the proposed corporation is likely to mislead the public as to its character or purpose; or if the proposed name is the same as one already adopted or appropriated by an existing association in the same county, or so similar thereto as to be likely to mislead the public.

(c) Upon receipt of such certificate from the Administrator of the Savings and Loan Division, the register of deeds shall, if said certificate of incorporation be in accordance with law, issue and cause same to be recorded in the records of his office as hereinabove provided. (1905, c. 435, s. 1; Rev., s. 3877; C.S., s. 5170; 1931, c. 73; 1967, c. 823, s. 4; 1971, c. 864, s. 17; 1979, c. 214, s. 1.)

**Editor's Note. —**

Subsection (a) of this section is set out to correct a typographical error in the first line in the Replacement Volume.

The 1979 amendment, effective June 1, 1979, inserted "or that there is not a reasonable demand and necessity in the community to be

served by its establishment;" near the middle of the second sentence in subsection (b).

Session Laws 1979, c. 214, s. 4, provides: "This act shall become effective on June 1, 1979, but shall not apply to any pending applications filed prior to effective date."

**§ 54-12.1. Merger of building and loan associations. —** Any two or more building and loan associations organized or to be organized, or existing under the laws of this State and operating under the provisions of this Subchapter, may merge into a single association which may be either one of said merging associations, and the procedure to effect such merger shall be as follows:

- (1) The directors, or a majority of them, of such associations as desire to merge, may, at separate meetings, enter into a written agreement of merger signed by them, and under the corporate seals of the respective associations, specifying each association to be merged and the association which is to receive into itself the merging association or associations, and prescribing the terms and conditions of the merger and the mode of carrying it into effect. Such merger agreement may provide the manner and basis of converting or exchanging the shares in the association or associations so merged for shares of the same or a different class of the receiving association.

**Editor's Note.** — Subdivision (1) of this section is set out above to correct an error in the Replacement Volume.

## ARTICLE 2.

### *Shares and Shareholders.*

#### § 54-18. Minors as shareholders.

**Editor's Note.** — For article, "The Contracts of Minors Viewed from the Perspective of Fair Exchange," see 50 N.C.L. Rev. 517 (1972).

## ARTICLE 2A.

### *Savings Accounts.*

**54-18.6. Shares and deposits defined.** — Such shares as mentioned in Article 2 of this Chapter, and such deposits as mentioned in Article 2A of this Chapter, shall be those funds, the custody of which is transferred to a savings and loan association in this State by its shareholders or depositors, which are withdrawable upon the demand of the owner of such shares or deposits, subject only to the agreed upon notice of intention to withdraw. (1979, c. 801, s. 15.)

**Editor's Note.** — Session Laws 1979, c. 801, s. 15 makes the act effective with respect to taxable years beginning on and after Jan. 1, 1979.

## ARTICLE 3.

### *Loans.*

**§ 54-19. Manner of making loans; security required.** — (a) The bylaws of a savings and loan association organized under the laws of this State shall provide procedures by which loans are to be approved and made by the association.

(b) No real estate loan shall be made by an association unless it has been approved by the board of directors of the association or, in the alternative, unless it has been approved by a loan committee composed of no less than three persons appointed by the board of directors. The persons appointed by the board of directors to be members of the loan committee shall be directors or officers of the association; provided, however, the majority of the loan committee shall be directors. All actions taken by the loan committee shall be reported to the board of directors at the next meeting of the board.

(c) The bylaws of the association shall require meetings of the board of directors or the loan committee to be held no less frequently than once each month for the purpose of considering loan applications and, if appropriate, approving loans.

(d) No loan shall be made to any person who is not a member of the association.

(e) Except as otherwise provided by law, borrowing members shall be required to give security to the association on all loans in one or more of the following forms:

- (1) Mortgage or deed of trust on real estate. Mortgages or deeds of trust received by an association as security for a loan may be subject only to mortgages and deeds of trust to secure commercial loans made by the association or by other savings and loan associations having a place of business in this State; and, if the entire face amount of the loan is distributed to the borrower, to mortgages and deeds of trust to secure residential loans made by the association or by other savings and loan associations having a place of business in this State; and to undue taxes and special assessments.
- (2) Security interest in shares, deposits, certificates or other accounts in the association. The amount of the security received in this form shall not exceed the withdrawable value of the shares, deposits, certificates or other accounts in which the security interest is granted.
- (3) Security interest in bonds issued as general obligations of the United States of America or of the State of North Carolina. The amount of the security received in this form shall not exceed ninety percentum (90%) of the face value of the bonds in which the security interest is granted.

(f) The provisions of this section shall apply equally to mutual and stock-owned savings and loan associations, except: persons borrowing money from stock-owned associations shall not be required to be members of said associations; stock in a stock-owned association shall not be considered to be "shares" as that term is used in this section and shall not be accepted as security for a loan pursuant to G.S. 54-19(e)(ii). (1905, c. 435, s. 8; Rev., s. 2890; 1907, c. 959, s. 4; 1919, c. 249; C.S., s. 5182; 1937, c. 11; 1941, c. 65; 1959, c. 158; 1979, c. 485, ss. 1, 2.)

**Editor's Note.** — The 1979 amendment rewrote this section.

**§ 54-20. Methods or plans of repayment of loans.** — (a) Savings and loan associations organized under the laws of this State shall agree in writing with borrowing members as to the method or plan by which indebtedness shall be repaid.

(b) No method or plan of repayment shall be employed that will not mature and pay off the loan within a term to be fixed by the Savings and Loan Commission, which term shall not exceed 40 years from the date of the making thereof; provided, that the board of directors of a savings and loan association may authorize the renewal or extension of the time of repayment of any loan made by the association.

(c) Every person who has obtained or shall obtain a loan or who has assumed or shall assume payment of a loan or who shall be obligated upon a loan held by an association, shall be by reason thereof a member of the association making or holding such loan and shall be deemed a member until such loan is fully paid or assumed by another person or persons acceptable to the association. Such association may issue certificates of stock or membership to such member, but certificates shall not be necessary or required.

(d) Except as otherwise provided by statute the board of directors of any savings and loan association organized under the laws of this State may permit borrowing members to repay the indebtedness by any method or plan which the Administrator of the Savings and Loan Division shall, subject to the direction and approval of the Savings and Loan Commission, prescribe or approve.

(e) Except as otherwise provided by statute the board of directors of any savings and loan association organized under the laws of this State may direct that the association shall use any form of loan instrument or document (including notes and deeds of trust) which the Administrator of the Savings and Loan Division shall, subject to the direction and approval of the Savings and Loan Commission, prescribe or approve.

(f) The provisions of subsections (d) and (e) above shall not be construed to prohibit or make unlawful any method or plan of repayment of indebtedness or any loan instrument or document which is not otherwise prohibited or made unlawful by law or regulation. (1937, c. 18; 1945, c. 189, s. 1; 1959, c. 367; 1971, c. 466; 1977, c. 594.)

**Editor's Note.** — The 1977 amendment, effective Sept. 14, 1977, rewrote this section.

#### § 54-21.2. Investments.

(b) Subject to such rules as the Administrator of the Savings and Loan Division may prescribe, any such association is authorized and permitted to make any loan or investment permitted to be made by any federal savings and loan association by the Congress of the United States, Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation. All investments made by State-chartered savings and loan associations after 1958 and prior to April 30, 1979, shall for all purposes be considered to have been permitted investments if such investments were permitted to be made by federal savings and loan associations at the time they were made by a State-chartered savings and loan association.

(1975, c. 410; 1977, c. 593; 1979, c. 484.)

**Editor's Note.** — The 1975 amendment deleted "now or hereafter" preceding "permitted" near the middle of the first sentence and added the second sentence of subsection (b).

The 1977 amendment, substituted "June 16, 1977" for "May 26, 1975" in the second sentence of subsection (b).

The 1979 amendment substituted "rules" for "regulations and limitations" near the beginning of the first sentence of subsection (b) and "April 30, 1979" for "June 16, 1977," in the second sentence of subsection (b).

As the rest of the section was not changed by the amendments, only subsection (b) is set out.

#### ARTICLE 4.

##### *Under Control of Administrator of the Savings and Loan Division.*

**§ 54-24.1. Savings and Loan Commission.** — (a) There shall be in the Department of Commerce a Savings and Loan Commission which shall consist of seven members. The members of the Savings and Loan Commission shall elect one of its members to serve as chairman of the Commission for such term as to be set forth in the bylaws of the Commission. The five members of the Savings and Loan Advisory Board, heretofore appointed by the Governor, shall continue as members of this Commission and shall serve their full terms and their successors shall be appointed in the same manner and for the same terms as was heretofore provided for members of the Savings and Loan Advisory Board. Upon

July 14, 1971, and quadrennially thereafter, the Governor shall appoint a sixth and seventh member of the Commission whose term shall be for four years. Three members of the Commission shall be persons who have had experience in management of savings and loan associations. At least four members shall be appointed as representatives of the borrowing public, and shall not be employees of, or directors of any financial institution or have any interest in any financial institution other than as a result of being a depositor or borrower. Under this section, no person shall be considered to have an interest in a financial institution whose interest in any stock-owned savings and loan association does not exceed one-half of one percent (1/2 of 1%) of the capital stock of that financial institution. In the event that the composition of the commission does not conform to that prescribed above on April 30, 1979, such composition shall be corrected thereafter by appropriate appointments as terms expire and as vacancies occur in the commission; provided that no person shall serve on the commission for more than two complete consecutive terms.

Meetings shall be held regularly as fixed by the bylaws but special meetings may be had at any time upon call of the chairman, or any three members of the Commission. Members of the Commission shall be reimbursed for expenses incurred in the performance of their duties under this section as prescribed in G.S. 138-5.

(b) The relationship between the Secretary of Commerce and the Savings and Loan Commission shall be as defined for a type II transfer under G.S. 143A-1 to 143A-11.

(c) The Savings and Loan Commission is hereby vested with full power and authority to review, approve, disapprove, or modify any action taken by the Administrator of the Savings and Loan Division in the exercise of all powers, duties, and functions vested in or exercised by the Administrator of the Savings and Loan Division under the savings and loan association laws of this State. (1967, c. 557; 1971, c. 864, s. 17; 1975, c. 709, ss. 2, 3; 1979, c. 214, s. 3; c. 478, s. 2.)

**Editor's Note.** — The 1975 amendment, rewrote the second sentence of subsection (a) and inserted "and seventh" near the middle of the fourth sentence of that subsection.

The first 1979 amendment, effective June 1, 1979, inserted "disapprove" near the beginning of subsection (c).

The second 1979 amendment substituted "Three" for "At least three" at the beginning of

the fifth sentence of the first paragraph of subsection (a) and added the sixth, seventh, and eighth sentences to that paragraph.

Session Laws 1979, c. 214, s. 4 provides: "This act shall become effective on June 1, 1979, but shall not apply to any pending applications filed prior to effective date."

**§ 54-25.1. Other fees.** — The Administrator, subject to the advice and consent of the Savings and Loan Commission, shall on or before June 1 of each year, determine and fix the fee schedule for the fees to be collected from applicants to defray the costs of processing charter, branch, merger, conversion, location change and name change applications, and for the fees to be collected from State-chartered associations for supervision by the Savings and Loan Division. (1979, c. 630.)

**§ 54-30. Failing to exhibit books or making false statement a misdemeanor; disclosing records or information obtained upon examination prohibited.** — (a) If any person, having in his possession or control any books, accounts, or papers of any building and loan association licensed by law, shall refuse to exhibit the same to the Administrator of the Savings and Loan Division, or his agents on demand, or shall knowingly or willingly make any false statement in regard to the same, he shall be guilty of a misdemeanor, and fined and imprisoned, at the discretion of the court.

(b) Notwithstanding any laws to the contrary, the following records or information of the Savings and Loan Commission, the Administrator of the Savings and Loan Division or the agent of either, shall be confidential and shall not be disclosed or made public:

- (1) Records or information obtained or compiled pursuant to G.S. 54-30(a) or obtained or compiled during or in connection with an examination, audit or investigation of any savings and loan association;
  - (2) Records or information obtained or compiled in preparation or anticipation of litigation, examination, audit or investigation;
  - (3) Records or information that contain or include the name(s) of any member(s) of a savings and loan association or reveal the collateral given, shares owned, or deposits made by any such member;
  - (4) Records or information obtained, prepared or compiled during or as a result of an examination, audit or investigation of any savings and loan association or savings and loan practice by an agency of the United States, or jointly by such agency and the Administrator of the Savings and Loan Division or his agents, if such records or information would be confidential under federal law or regulation;
  - (5) Information and records of information and reports submitted by savings and loan associations to federal regulatory agencies, if such records or information would be confidential under federal law or regulation;
  - (6) Records of or information regarding complaints from the public received by the Savings and Loan Division and concerning savings and loan associations under its supervision if such complaints would or could result in an investigation;
  - (7) Any other letters, reports, memoranda, recordings, charts, or other documents or records which would disclose any information set forth in any of the confidential records referred to in subdivisions (1) through (6).
- (c) This section shall apply equally to matters concerning stock-owned and mutual savings and loan associations. (1893, c. 434; 1899, c. 164; Rev., s. 3329; C.S., s. 5191; 1971, c. 864, s. 17; 1979, c. 606, ss. 1, 2.)

**Editor's Note.** — The 1979 amendment designated the former section as subsection (a), substituted "willingly" for "willfully" near the end of subsection (a), and added subsections (b) and (c).

**§ 54-33.3. Certain powers granted to State associations.** — In addition to all the powers granted under this Subchapter, any savings and loan association incorporated under the laws of this State and operating under the provisions of this Subchapter is herein authorized to:

- (2) Act as trustee of any trust created or organized in the United States and forming part of a stock bonus, pension or profit-sharing plan which qualifies or qualified for specific tax treatment under section 401(d) or section 408(a) of the Internal Revenue Code of 1954, as amended, if the funds of such trusts are invested only in savings accounts or deposits in such association or of obligations or securities issued by such association. All funds held in such fiduciary capacity by any such association may be commingled for appropriate purposes of investment, but individual records shall be kept by the fiduciary of each participant and shall show in proper detail all transactions engaged in under the authority of this section.
- (4) Establish off the premises of any principal office, branch or window a customer communications terminal, point-of-sale terminal, automated teller machine, automated or other direct or remote

information-processing device or machine, whether manned or unmanned, through or by means of which funds or information relating to any financial service or transaction rendered to the public is stored and transmitted, instantaneously or otherwise, to or from an association terminal or other terminals controlled or used by or with other parties; and the establishment and use of such a device or machine shall not be deemed a branch or teller's window, and the capital requirements and standards for approval of a branch or teller's window, as set forth in the relevant statutes, and regulations, shall not be applicable to the establishment of any such off-premises terminal, device or machine, and that savings and loan associations, may through mutual consent and agreement, share such terminals, devices or machines. Provided further, that savings and loan associations, may through mutual consent and agreement, share on-premises unmanned automated teller machines and cash dispensers. Subject to the direction and approval of the Savings and Loan Commission, the Administrator of the Savings and Loan Division may prescribe rules and regulations with regard to the application for permission for the use, maintenance and supervision of said terminals, devices or machines.

- (5) Invest in the capital stock, obligations or other securities of any service corporation organized under the laws of the State of North Carolina when the entire capital stock of such corporation is owned or is to be owned, by one or more, but less than 10 State associations who may join in said stock ownership with one or more, but less than 10, federal savings and loan associations whose principal offices are in the State; but no association may make any investment in such corporation if its aggregate investment as determined by the Administrator of the Savings and Loan Division of North Carolina would exceed one percent (1%) of its assets. Such service corporation shall be subject to audit by the Administrator of the Savings and Loan Division of North Carolina, and the cost of such audit shall be borne by such corporation. Such service corporation may engage in such data processing activities as are approved as of July 1, 1977, by the Federal Home Loan Bank Board for service corporations for federal savings and loan associations whose principal offices are in the State of North Carolina and such additional data processing activities as are from time to time approved by the Administrator of the Savings and Loan Division of North Carolina subject to the direction and approval of the Savings and Loan Commission. However, nothing in this subdivision shall permit these service corporations to perform data processing activities for commercial customers other than savings and loan associations. Nothing in this subdivision shall be interpreted to restrict or limit State chartered savings and loan associations from forming service corporations and conducting such activities as are otherwise authorized by G.S. 54-33.3(1) and G.S. 54-21.2(d) and regulations pursuant thereto. (1971, c. 632; c. 864, s. 17; 1975, c. 55; 1977, c. 473, ss. 1, 2; c. 1111, ss. 1, 2.)

**Editor's Note.** — The 1975 amendment inserted "or section 408(a)" following "section 401(d)" in the first sentence of subdivision (2).

The first 1977 amendment, effective July 1, 1977, added subdivision (4).

The second 1977 amendment added subdivision (5).

As the rest of the section was not changed by the amendments, only the introductory language and subdivisions (2), (4) and (5) are set out.

## ARTICLE 7A.

### *Mutual Deposit Guaranty Associations.*

**§ 54-44.8. Powers of associations.** — A guaranty association incorporated in accordance with the provisions of this Article may:

- (5) Invest any of its funds in:
  - a. Bonds or interest-bearing obligations of the United States or for which the faith and credit of the United States are pledged for the payment of principal and interest;
  - b. Bonds or interest-bearing obligations of this State;
  - c. Farm loan bonds issued under the "Federal Farm Loan Act" and amendments thereto;
  - d. Notes, debentures, and bonds of the federal home loan bank issued under the "Federal Home Loan Bank Act" and any amendments thereto;
  - e. Bonds or other securities issued under the "Home Owners' Loan Act of 1933" and any amendments thereto;
  - f. Securities acceptable to the United States to secure government deposits in national banks;
  - g. Certificates of deposit of any financial institution that is subject to examination and supervision by the United States or by this State;
  - h. Bonds or other evidences of indebtedness of counties and municipalities of the State of North Carolina; provided, that said bonds or other evidences of indebtedness of such counties and municipalities shall have a rating by Moody's Investors Services, Inc., of not less than AA, and a rating by the North Carolina Municipal Council, Inc., of not less than 90 points out of 100 points.
  - i. Stock in banking institutions licensed to do business in the State of North Carolina.
- (9) Make or cause to be made examinations or audits of member institutions. (1967, c. 1091; 1969, c. 816; 1975, c. 528; 1977, c. 578, s. 1.)

**Editor's Note.** — The 1975 amendment added paragraph i to subdivision (5).

The 1977 amendment added subdivision (9).

As the rest of the section was not changed by the amendments, only the introductory language and subdivisions (5) and (9) are set out.

**§ 54-44.10. Administrator to control and supervise associations; rules and regulations; annual examination.** — In addition to any and all other powers, duties and functions vested in the Administrator under the provisions of this Article, and for the protection of member institutions and the general public, the Administrator shall have general control and supervision over all guaranty associations doing business in this State. Guaranty associations shall be subject to the control and supervision of the Administrator as to their conduct, organization, management, business practices, reserve requirements and their financial and fiscal matters. Such control and supervision is subject to the provisions of G.S. 54-24.1(c).

The Administrator shall have the right, and is hereby empowered, to issue rules and regulations whenever he deems it necessary for the administration of this Article as well as rules and regulations with respect to:

- (1) Types of financial records to be maintained by guaranty associations;
- (2) Retention periods of various financial records;
- (3) Internal control procedures of guaranty associations;
- (4) Conduct and management of guaranty associations;
- (5) Reports which may be required by the Administrator.

It shall be the duty of the board of trustees of the guaranty association to put into effect and to carry out such rules and regulations.

At least once each year the Administrator shall make or cause to be made an examination into the affairs of each guaranty association doing business in this State. The Administrator of the Credit Union Division of this State, in his capacity as supervisor of State chartered credit unions, if he deems it necessary, may designate agents to participate in such examination. The expenses of such yearly examination shall be paid by the guaranty association so examined. (1967, c. 1091; 1973, c. 967, s. 2; 1977, c. 578, s. 2.)

**Editor's Note.** —

The 1977 amendment rewrote this section.

**§ 54-44.11. Special examinations or audits.** — Whenever the Administrator deems it necessary, he may make or cause to be made a special examination or audit of any guaranty association doing business in this State in addition to the regular examination provided for by this Article. The expense of a special examination or audit shall be paid by the guaranty association so examined. (1967, c. 1091; 1973, c. 967, s. 2; 1977, c. 578, s. 3.)

**Editor's Note.** —

The 1977 amendment inserted "or audit" in the first and second sentences.

**§ 54-44.14. Removal of dishonest, incompetent, etc., officers or employees.** — The Administrator shall have the right, and is hereby empowered, to require the board of directors or trustees of any guaranty association to immediately remove from office any officer, director, trustee, or employee of any guaranty association doing business in this State, who shall be found by the Administrator to be dishonest, incompetent, or reckless in the management of the affairs of the guaranty association, or in violation of the lawful orders, rules and regulations issued by the Administrator, or who violates any of the laws set forth in Chapter 54 of the General Statutes of North Carolina. (1977, c. 578, s. 4.)

## SUBCHAPTER III. CREDIT UNIONS.

### ARTICLE 9.

#### *Credit Union Division; Administrator of Credit Unions.*

**§§ 54-74 to 54-75.1:** Repealed by Session Laws 1975, c. 538, s. 1, effective July 1, 1975.

**Cross Reference.** — For present provisions as to supervision and regulation of credit unions, see §§ 54-109.10 to 54-109.17.

**Editor's Note.** — Session Laws 1975, c. 538, s. 1, effective July 1, 1975, repealed Articles 9

through 14 of this Chapter and enacted in their place new Articles designated 9 through 14A in the act. The new Articles have been codified herein as Articles 14A through 14L.

**ARTICLE 10.***Incorporation of Credit Unions.*

**§§ 54-76 to 54-81:** Repealed by Session Laws 1975, c. 538, s. 1, effective July 1, 1975.

**Cross Reference.** — For present provisions as to formation of credit unions, see §§ 54-109.1 to 54-109.6.

**Editor's Note.** — Session Laws 1975, c. 538, s. 1, effective July 1, 1975, repealed Articles 9

through 14 of this Chapter and enacted in their place new Articles designated 9 through 14A in the act. The new Articles have been codified herein as Articles 14A through 14L.

**ARTICLE 11.***Powers of Credit Unions.*

**§§ 54-82 to 54-93:** Repealed by Session Laws 1975, c. 538, s. 1, effective July 1, 1975.

**Cross Reference.** — For present provisions as to powers of credit unions, see §§ 54-109.21 to 54-109.31.

**Editor's Note.** — Session Laws 1975, c. 538, s. 1, effective July 1, 1975, repealed Articles 9

through 14 of this Chapter and enacted in their place new Articles designated 9 through 14A in the act. The new Articles have been codified herein as Articles 14A through 14L.

**ARTICLE 12.***Shares in the Corporation.*

**§§ 54-94 to 54-97:** Repealed by Session Laws 1975, c. 538, s. 1, effective July 1, 1975.

**Cross Reference.** — For present provisions as to shares and accounts in credit unions, see §§ 54-109.53 to 54-109.61.

**Editor's Note.** — Session Laws 1975, c. 538, s. 1, effective July 1, 1975, repealed Articles 9

through 14 of this Chapter and enacted in their place new Articles designated 9 through 14A in the act. The new Articles have been codified herein as Articles 14A through 14L.

**ARTICLE 13.***Members and Officers.*

**§§ 54-98 to 54-104:** Repealed by Session Laws 1975, c. 538, s. 1, effective July 1, 1975.

**Cross Reference.** — For present provisions as to direction of the affairs of credit unions, see §§ 54-109.35 to 54-109.49.

**Editor's Note.** — Session Laws 1975, c. 538, s. 1, effective July 1, 1975, repealed Articles 9

through 14 of this Chapter and enacted in their place new Articles designated 9 through 14A in the act. The new Articles have been codified herein as Articles 14A through 14L.

**ARTICLE 14.***Supervision and Control.*

**§§ 54-105 to 54-109:** Repealed by Session Laws 1975, c. 538, s. 1, effective July 1, 1975.

**Cross Reference.** — For present provisions as to supervision and regulation of credit unions, see §§ 54-109.10 to 54-109.17.

**Editor's Note.** — Session Laws 1975, c. 538, s. 1, effective July 1, 1975, repealed Articles 9

through 14 of this Chapter and enacted in their place new Articles designated 9 through 14A in the act. The new Articles have been codified herein as Articles 14A through 14L.

**ARTICLE 14A.***Formation of Credit Union.*

**§ 54-109.1. Definition and purposes.** — A credit union is a cooperative, nonprofit association, incorporated under Articles 14A to 14L of this Chapter, for the purposes of encouraging thrift among its members, creating a source of credit at a fair and reasonable rate of interest, and providing an opportunity for its members to use and control their own money in order to improve their economic and social condition. (1975, c. 538, s. 1.)

**Editor's Note.** — Session Laws 1975, c. 538, s. 4, makes the act effective July 1, 1975.

Session Laws 1975, c. 538, s. 1, effective July 1, 1975, repealed Articles 9 through 14 of this Chapter and enacted in their place new Articles designated Articles 9 through 14A in the act, but

which have been codified herein as Articles 14A through 14L. Where appropriate, the historical citations to the repealed sections have been added to corresponding sections in the new Articles.

**§ 54-109.2. Organization procedure.** — (a) Any 12 or more residents of this State, of legal age, who have a common bond referred to in G.S. 54-109.26 may make application to organize a credit union and become charter members thereof by complying with this section.

(b) The subscribers shall execute in duplicate articles of incorporation and agree to the terms thereof, which articles shall state:

- (1) The name, which shall include the words "credit union" and which shall not be the same as that of any other existing credit union in this State, and the location where the proposed credit union is to have its principal place of business;
- (2) That the existence of the credit union shall be perpetual;
- (3) The par value of the shares of the credit union, which shall be in five dollar (\$5.00) multiples, of not less than five dollars (\$5.00), nor more than twenty-five dollars (\$25.00);
- (4) The names and addresses of the subscribers to the articles of incorporation, and the value of shares subscribed to by each, which shall be not less than five dollars (\$5.00); and
- (5) That the credit union may exercise such incidental powers as are necessary or requisite to enable it to carry on effectively the business for which it is incorporated, and those powers which are inherent in the credit union as a legal entity.

(c) The subscribers shall prepare and adopt bylaws for the general government of the credit union, consistent with Articles 14A to 14L of this Chapter, and execute the same in duplicate.

(d) They shall select at least five qualified persons who agree to serve on the board of directors, and at least three qualified persons who agree to serve on the supervisory committee. A signed agreement to serve in these capacities until the first annual meeting or until the election of their successors, whichever is later, shall be executed by those who so agree. This agreement shall be submitted to the administrator of credit unions.

(e) The subscribers shall forward the required charter fee and an investigation fee, as prescribed by the Credit Union Commission, and the articles of incorporation and the bylaws to the Administrator of the Credit Union Division. The Administrator may issue a certificate of approval if the articles and the bylaws are in conformity with Articles 14A to 14L of this Chapter and he is satisfied that the proposed field of operation is favorable to the success of such credit union and that the standing of the proposed organizers is such as to give assurance that its affairs will be properly administered. He shall issue to the corporation a certificate of approval, annexed to a duplicate certificate of incorporation and of the bylaws, which certificate of approval, together with the attached duplicate certificate of incorporation, shall be recorded in the office of the register of deeds of the county in which the office of such credit union is situated, and upon recordation of the incorporators shall become and be a corporation for the purposes set forth in this Article. The register of deeds of the county in which such recordation is made shall charge the same fee for such recordation as he is now allowed to charge for handling and recording a certificate of incorporation of a corporation organized under the business corporation laws of this State. The application shall be acted upon within 30 days. (1915, c. 115, ss. 2, 9; C. S., ss. 5210, 5211, 5233; 1925, c. 73, s. 3; 1935, c. 87; 1965, c. 956, ss. 1, 4, 19; 1973, c. 199, s. 8; 1975, c. 538, s. 1.)

**§ 54-109.3. Form of articles and bylaws.** — In order to simplify the organization of credit unions, the Administrator of Credit Unions shall cause to be prepared a form of articles of incorporation and a form of bylaws, consistent with Articles 14A to 14L of this Chapter, which may be used by credit union incorporators for their guidance. Such articles of incorporation and bylaws shall provide:

- (1) The name of corporation.
- (2) The purposes for which it is formed.
- (3) Qualifications for membership.
- (4) The date of the annual meeting; the manner in which members shall be notified of meetings; the manner of conducting the meetings; the number of members which constitute a quorum at the meetings, and the regulations as to voting.
- (5) The number of members of the board of directors, their powers and duties, and the compensation and duties of officers elected by the board of directors, and frequency of meetings.
- (6) The number of members of the credit committee, if any, their powers and duties.
- (7) The number of members of the supervisory committee, if any, their powers and duties.
- (8) The par value of shares of capital stock.
- (9) The conditions upon which shares may be issued, paid in, transferred, and withdrawn.
- (10) The fines, if any, which shall be charged for failure to meet obligations to the corporation punctually.
- (11) The conditions upon which deposits may be received and withdrawn. Whether the proposed corporation shall, in addition, have power to borrow funds.

- (12) The manner in which the funds of the corporation shall be invested.
- (13) The conditions upon which loans may be made and repaid.
- (14) The maximum rate of interest that may be charged upon loans, not to exceed, however, the legal rate.
- (15) The method of receipting for money paid on account of shares, deposits, or loans.
- (16) The manner in which the reserve fund shall be accumulated.
- (17) The manner in which dividends shall be determined and paid to members.
- (18) The manner in which a voluntary dissolution of the corporation shall be effected.
- (19) The manner in which the bylaws and articles of incorporation may be amended. (1915, c. 115, s. 2; C. S., s. 5211; 1975, c. 538, s. 1.)

**§ 54-109.4. Amendments.** — (a) The articles of incorporation or the bylaws may be amended as provided in the bylaws. Amendments to the articles of incorporation or bylaws shall be submitted to the Administrator of Credit Unions who shall approve or disapprove the amendments within 60 days.

(b) Amendments shall become effective upon approval in writing by the Administrator and no fee shall be charged for such approval. (1915, c. 115, s. 3; C. S., s. 5213; 1925, c. 73, s. 3; 1935, c. 87; 1965, c. 956, s. 6; 1973, c. 1331, s. 3; 1975, c. 538, s. 1.)

**§ 54-109.5. Use of name exclusive.** — With the exception of a credit union organized under the provisions of Articles 14A to 14L of this Chapter or of any other credit union act, or an association of credit unions or a recognized chapter thereof, any person, corporation, copartnership or association using a name or title containing the words "credit union" or any derivation thereof or representing themselves in their advertising or otherwise as conducting business as a credit union shall be guilty of a misdemeanor punishable by fine of not more than five hundred dollars (\$500.00) or imprisoned not more than one year, or both, and may be permanently enjoined from using such words in its name. (1915, c. 115, s. 4; C. S., s. 5214; 1925, c. 73, s. 3; 1935, c. 87; 1941, c. 236; 1975, c. 538, s. 1.)

**§ 54-109.6. Office facilities.** — (a) A credit union may maintain service facilities at locations other than its main office if the maintenance of such offices is reasonably necessary to furnish service to its members, subject to the approval of the Administrator of Credit Unions.

(b) A credit union may change its place of business within this State upon written notice to the Credit Union Division. Such a change shall be recorded in the office of the register of deeds where its office was located, and a second duplicate in the office of the register of deeds of the county in which the new office is to be located, if same is changed to another county. If the change is from one location to another in the same county, then only the Administrator of Credit Unions need be notified.

(c) A credit union may share office space with one or more credit unions and contract with any person or corporation to provide facilities or personnel. (1915, c. 115, ss. 9, 25; C. S., ss. 5215, 5233; 1925, c. 73, s. 3; 1935, c. 87; 1965, c. 956, ss. 1, 7, 19; 1967, c. 823, s. 10; 1973, c. 199, s. 8; c. 1331, s. 3; 1975, c. 538, s. 1.)

**§§ 54-109.7 to 54-109.9:** Reserved for future codification purposes.

## ARTICLE 14B.

*Supervision and Regulation.*

**§ 54-109.10. Creation and supervision of Division.** — There shall be established in the North Carolina Department of Commerce a Credit Union Division which shall be under the supervision of [the] Administrator of Credit Unions appointed by the Secretary of Commerce. The Credit Union Division and the Administrator of Credit Unions shall be under the general direction and supervision of the Secretary of Commerce, and there shall be such assistants to the Administrator of Credit Unions as may be necessary and the salaries of the Administrator and assistants shall be fixed by the State Personnel Council. (1915, c. 115, s. 1; C. S., s. 5208; 1925, c. 73, s. 4; 1935, c. 87; 1965, c. 956, s. 1; 1971, c. 864, s. 17; 1975, c. 538, s. 1.)

**Editor's Note.** — Session Laws 1975, c. 538, s. 4, makes the act effective July 1, 1975.

Session Laws 1975, c. 538, s. 1, effective July 1, 1975, repealed Articles 9 through 14 of this Chapter and enacted in their place new Articles designated Articles 9 through 14A in the act, but

which have been codified herein as Articles 14A through 14L. Where appropriate, the historical citations to the repealed sections have been added to corresponding sections in the new Articles.

**§ 54-109.11. Duties of Administrator.** — The duties of the Administrator of Credit Unions shall be as follows:

- (1) To organize and conduct in the State Department of Commerce, a bureau of information in regard to cooperative associations and rural and industrial credits.
- (2) Upon request, to furnish, without cost, such printed information and blank forms as, in his discretion, may be necessary for the formation and establishment of any local credit union in the State.
- (3) To maintain an educational campaign in the State looking to the promotion and organization of credit unions. Upon the written request of 12 bona fide residents of any particular locality in this State expressing a desire to form a local credit union at or in such locality, the Administrator of Credit Unions, or one of his assistants, shall proceed as promptly as may be convenient to such locality and make an investigation in order that the Administrator may determine whether or not a local credit union should be established according to the standards set forth and provided in this Article. The Administrator shall notify the applicants of his decision within 30 days after receipt of the written request. Before refusing the establishment of a credit union, the Administrator shall afford the applicants an opportunity to be heard therewith in person or by counsel and at least 60 days prior to the date set for a hearing on any such matter shall notify in writing the applicants of the date of said hearing and assign therein the grounds for the action contemplated to be taken and as to which inquiry shall be made on the date of such hearing. The determination of the Administrator shall be subject to judicial review in all respects according to the provisions and procedures set forth in Chapter 150A of the General Statutes of North Carolina, as amended.
- (4) To examine at least once a year, and oftener if such examination be deemed necessary by the Administrator or his assistant, the credit unions formed under this Article. A report of such examination shall be filed with the State Department of Commerce, and a copy mailed to the credit union at its proper address.

(5) The Administrator of Credit Unions is authorized, empowered, and directed to fix the amount of a blanket surety bond which shall be required of each credit union official, committee member and employee, irrespective of whether such official, committee member and employee receives, pays or has custody of money or other personal property owned by a credit union or in the custody or control of the credit union as collateral or otherwise. The surety on the bond shall be a surety company authorized to do business in North Carolina. Any such bond or bonds shall be in a form approved by the Administrator of Credit Unions with a view to providing surety coverage to the credit union with reference to loss by reason of acts of fraud or dishonesty including forgery, theft, embezzlement, wrongful abstraction or misapplication on the part of the person, directly or through connivance with others, and such other surety coverages as the Administrator of Credit Unions may determine to be reasonably appropriate or as elsewhere required by the Chapter. Any such bond or bonds shall be in an amount in relation to the money or other personal property involved or in relation to the assets of the credit union as the Administrator may from time to time prescribe by regulation for the purpose of requiring reasonable coverage. The Administrator may also approve the use of a form of excess coverage bond whereby a credit union may obtain an amount of coverage in excess of the basic surety coverage. No agreement, compromise or settlement of any claim or claims filed by a credit union with any surety or any surety company for less than the full amount of said claim or claims shall be entered into or made by the board of directors of any credit union unless and until the said claim or claims shall have been submitted to the Administrator of Credit Unions and his advice thereon given or transmitted to the board of directors of said credit union. The following schedule shall be deemed as the minimum fidelity and faithful performance bond requirements only:

<i>Assets</i>	<i>Minimum Coverage</i>
\$ 0,000 to \$ 5,000	\$ 1,000
5,001 to 10,000	2,000
10,001 to 20,000	4,000
20,001 to 30,000	6,000
30,001 to 40,000	8,000
40,001 to 50,000	10,000
50,001 to 75,000	15,000
75,001 to 100,000	20,000
100,001 to 200,000	30,000
200,001 to 300,000	40,000
300,001 to 400,000	50,000
400,001 to 500,000	70,000
500,001 to 750,000	85,000
750,001 to 1,000,000	100,000
\$1,000,001 to 50,000,000	100,000 plus \$50,000 for each million or fraction thereof of assets over \$1,000,000
50,000,001 to 150,000,000	2,500,000 plus \$25,000 for each million or fraction thereof of assets over \$50,000,000
Over \$150,000,000	5,000,000.

It shall be the duty of the board of directors of each credit union to provide proper protection to meet any circumstances by obtaining adequate bond (an insurance) coverage in excess of the above minimum schedule. The treasurer and

all other persons handling credit union funds or records before entering upon his or their duties shall give a proper bond with good and sufficient surety, in an amount and character to be determined by the board in compliance with regulations conditioned upon the faithful performance of his or their trust.

The Administrator may require additional coverage for any credit union when, in his opinion, the surety bonds in force are insufficient to provide adequate surety coverage, and it shall be the duty of the board of directors of any credit union to obtain such additional coverage within 60 days after the date of written notice by the Administrator to such board of directors. For good cause shown, the Administrator may extend the time to obtain additional coverage. (1915, c. 115, s. 1; C. S., s. 5209; 1925, c. 73, ss. 2, 3, 5, 6; 1935, c. 87; 1957, c. 989, s. 1; 1965, c. 956, ss. 1-3; 1971, c. 864, s. 17; 1973, c. 199, ss. 1-3; c. 1331, s. 3; 1975, c. 538, s. 1; 1977, c. 559, s. 1.)

**Editor's Note.** — The 1977 amendment, effective July 1, 1977, added to the schedule in the first paragraph of subdivision (5) the provisions for assets of \$1,000,001 to \$50,000,000, \$50,000,001 to \$150,000,000 and over \$150,000,000. The amendment also deleted

the former second paragraph of subdivision (5), which provided generally the minimum coverage for assets of over \$1,000,000.

Session Laws 1973, c. 1331, s. 3, substituted the reference to Chapter 150A in subdivision (3) for a reference to Article 33 of Chapter 143.

**§ 54-109.12. Corporations organized hereunder subject to Administrator of Credit Unions; rules and regulations.** — In addition to any and all other powers, duties and functions vested in the Administrator of Credit Unions under the provisions of this Article, the Administrator of Credit Unions shall have general control, management and supervision over all corporations organized under the provisions of Article 14A. All corporations organized under the provisions of Article 14A shall be subject to the management, control and supervision of the Administrator of Credit Unions as to their conduct, organization, management, business practices and their financial and fiscal matters. The Administrator of Credit Unions may prescribe rules and regulations for the administration of this Article, as well as rules and regulations relating to financial records, business practices and the conduct and management of credit unions, and it shall be the duty of the board of directors and of the various officers of the credit union to put into effect and to carry out such regulations. (1915, c. 115, s. 7; C.S., s. 5237; 1925, c. 73, s. 3; 1935, c. 87; 1957, c. 989, s. 6; 1965, c. 956, ss. 1, 22; 1975, c. 538, s. 1; 1979, c. 198.)

**Editor's Note.** — The 1979 amendment substituted "Article 14A" for "this Article" at the end of the first sentence and near the beginning of the second sentence of this section.

**§ 54-109.13. Revocation of certificate; liquidation.** — If any such corporation shall neglect to make its annual report, as provided in this Article, or any other report required by the Administrator of Credit Unions for more than 15 days, or shall fail to pay the charges required, including the fines for delay in filing reports, the Administrator of Credit Unions shall give notice to such corporation of his intention to revoke the certificate of approval of the corporation for such neglect or failure, and if such neglect or failure continues for 15 days after such notice, the said Administrator shall, at his discretion, personally or by an agent appointed by him, take possession of the property and business of the corporation and retain possession until such time as he may permit it to resume business, or until its affairs be finally liquidated as provided for in G.S. 54-109.93. (1915, c. 115, s. 7; C. S., s. 5240; 1925, c. 73, ss. 3, 8; 1935, c. 87; 1957, c. 989, s. 8; 1965, c. 956, s. 1; 1975, c. 538, s. 1.)

**§ 54-109.14. Fees.** — (a) Each credit union subject to supervision and examination by the Administrator of Credit Unions, including credit unions in process of voluntary liquidation, shall pay into the office of the Administrator of Credit Unions twice each year, in the months of January and July, supervision fees, except those credit unions which liquidate or convert its charter shall pay into the office of the Administrator of Credit Unions, to the date of dissolution, pro rata supervision fees. Examination fees shall be paid promptly upon receipt of the examination report and invoice.

The Administrator of Credit Unions, subject to the advice and consent of the Credit Union Commission, shall, on or before December 1 of each year, determine and fix the scale of supervisory and examination fees to be assessed during the next calendar year.

No credit union shall be required to pay any supervisory fee until the expiration of 12 months from the date of the issuance of a certificate of incorporation to such credit union.

(b) Moneys collected under this section shall be deposited with the State Treasurer of North Carolina and expended, under the terms of the Executive Budget Act, to defray expenses incurred by the office of the Administrator of Credit Unions in carrying out its supervisory and auditing functions.

(c) All revenue derived from fees will be placed into a special account to be administered solely for the operation of the Credit Union Division. (1915, c. 115, s. 7; C. S., s. 5238; 1925, c. 73, ss. 3, 7; 1935, c. 87; 1941, c. 235; 1955, c. 1135, ss. 3, 4; 1957, c. 989, s. 7; 1965, c. 956, ss. 1, 23, 24; 1969, c. 69, s. 6; 1971, c. 864, s. 17; 1973, c. 199, s. 12; 1975, c. 538, s. 1; 1977, c. 559, ss. 2, 3.)

**Editor's Note.** — The 1977 amendment, effective July 1, 1977, deleted "and examination" following "supervision" where that word first appears in the first paragraph of subsection (a) and added at the end of that paragraph the exception as to credit unions which liquidate or convert their charters. In the

second paragraph of subsection (a), the amendment deleted the former second and third sentences, which authorized the Administrator to charge the credit union additional fees where the cost of the examination exceeded the annual fees assessed and paid by the credit union.

**§ 54-109.15. Reports.** — (a) Credit unions organized under Articles 14A to 14L of this Chapter shall, in January and in July of each year, make a report of condition to the Administrator of Credit Unions on forms supplied by him for that purpose. Additional reports may be required.

(b) Any such corporation which neglects to make semiannual reports as provided in subsection (a) of this section, or any of the other reports required by the Administrator of Credit Unions at the time fixed by the Administrator, shall forfeit to the Administrator of Credit Unions five dollars (\$5.00) for each day such neglect continues; and, furthermore, the Administrator of Credit Unions shall have authority, in his discretion, to revoke the certificate of incorporation and take possession of the assets and business of any corporation failing to pay the fees required in this section after serving notice of at least 15 days upon such corporation of his intention so to do. (1915, c. 115, s. 7; C. S., ss. 5238, 5240; 1925, c. 73, ss. 3, 7, 8; 1935, c. 87; 1941, c. 235; 1955, c. 1135, ss. 3, 4; 1957, c. 989, ss. 7, 8; 1965, c. 956, ss. 1, 23, 24; 1969, c. 69, s. 6; 1971, c. 864, s. 17; 1973, c. 199, s. 12; 1975, c. 538, s. 1.)

**§ 54-109.16. Annual examinations required; payment of cost.** — The Administrator of Credit Unions shall cause every such corporation to be examined once a year and whenever he deems it necessary. The examiners appointed by him shall be given free access to all books, papers, securities, and other sources of information in respect to the corporation; and for the purpose of such examination the Administrator shall have power and authority to

subpoena and examine personally, or by one of his deputies or examiners, witnesses on oath and documents, whether such witnesses are members of the corporation or not, and whether such documents are documents of the corporation or not. The Administrator may designate an independent auditing firm to do the work under his direction and supervision, with the cost to be paid by the credit union involved. (1915, c. 115, s. 7; C. S., s. 5239; 1925, c. 73, s. 3; 1935, c. 87; 1965, c. 956, ss. 1, 25; 1969, c. 69, ss. 7, 8; 1975, c. 538, s. 1; 1977, c. 559, s. 4.)

**Editor's Note.** — The 1977 amendment, effective July 1, 1977, deleted the former third sentence, which authorized the Administrator to charge the credit union the cost per day, per

man, for each day required to complete an examination whenever the cost of the annual examination exceeded the annual fees paid by the credit union to the State.

**§ 54-109.17. Records.** — (a) A credit union shall maintain all books, records, accounting systems and procedures in accordance with such rules as the Administrator from time to time prescribes. In prescribing such rules, the Administrator shall consider the relative size of a credit union and its reasonable capability of compliance.

(b) A credit union is not liable for destroying records after the expiration of the record retention time prescribed by the Administrator.

(c) A photostatic or photographic reproduction of any credit union records shall be admissible as evidence of transactions with the credit union. (1973, c. 98, s. 1; 1975, c. 538, s. 1.)

**§ 54-109.18. Selection of attorneys to handle loan-closing proceedings.** — The Administrator of credit unions shall establish rules and regulations relating to selection of attorneys-at-law to handle credit union loan closing proceedings. (1977, c. 559, s. 10.)

**Editor's Note.** — Session Laws 1977, c. 559, s. 11, makes the act effective July 1, 1977.

**§ 54-109.19. Removal of officers.** — (a) The Administrator of Credit Unions shall have the right and is hereby empowered to serve a written notice of his intention to remove from office any officer, director, committeeman or employee of any credit union doing business under Articles 14A through 15 of this Chapter who shall be found to be dishonest, incompetent, or reckless in the management of the affairs of the credit union, or who persistently violates the laws of this State or the lawful orders, instructions and regulations issued by the Administrator and/or the State Credit Union Commission.

(b) A notice of intention to remove a director, officer, committee member or employee from office shall contain a statement of the alleged facts constituting the grounds therefor and shall fix a time and place at which a hearing before the Credit Union Commission will be held thereon. Such hearing shall be fixed for a date not earlier than 30 days nor later than 60 days after the date of service of such notice unless an earlier or a later date is set by the Commission at the request of such director, officer, committee member or employee and for good cause shown. Pending this hearing, the Administrator may remove the alleged violator if he finds that it is essential to the continued well-being of the credit union or the public to do so. Unless, of course, such director, officer, committee member or employee shall appear at the hearing in person or by a duly authorized representative, he shall be deemed to have consented to the issuance of an order of such removal. In the event of such consent, or if upon the record made at any such hearing the Credit Union Commission shall find that any of

the grounds specified in such notice has been determined by the greater weight of the evidence, the Commission may issue such orders of removal from office as it may deem appropriate. Any such order shall become effective at the expiration of 30 days after service upon such credit union and the director, officer, committee member or employee concerned (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated or set aside by action of the Credit Union Commission or a reviewing court. (1979, c. 197, s. 1.)

**§ 54-109.20:** Reserved for future codification purposes.

## ARTICLE 14C.

### *Powers of Credit Union.*

**§ 54-109.21. General powers.** — A credit union may:

- (1) Make contracts;
- (2) Sue and be sued;
- (3) Adopt and use a common seal and alter same;
- (4) Acquire, lease, hold and dispose of property, either in whole or in part, necessary or incidental to its operations;
- (5) At the discretion of the board of directors, require the payment of an entrance fee or annual membership fee, or both, of any person admitted to membership;
- (6) Receive savings from its members in the form of shares, deposits, or special-purpose thrift accounts;
- (7) Lend its funds to its members as hereinafter provided;
- (8) Borrow from any source in accordance with policy established by the board of directors;
- (9) Discount and sell any eligible obligations, subject to rules and regulations prescribed by the Administrator;
- (10) Sell all or substantially all of its assets or purchase all or substantially all of the assets of another financial institution, subject to the approval of the Administrator of Credit Unions;
- (11) Invest surplus funds as provided in Articles 14A to 14L of this Chapter;
- (12) Make deposits in legally chartered banks, savings banks, savings and loan associations, trust companies and central-type credit union organizations;
- (13) Assess charges to members in accordance with the bylaws for failure to meet properly their obligations to the credit union;
- (14) Hold membership in other credit unions organized under Articles 14A to 14L of this Chapter or other acts, and in other associations and organizations composed of credit unions;
- (15) Declare dividends; pay interest on deposits and pay interest refunds to borrowers as provided in Articles 14A to 14L of this Chapter;
- (16) Sell travelers checks and money orders and charge a reasonable fee for such services, provided the instruments are payable at institutions other than a credit union;
- (17) Perform such tasks and missions as are requested by the federal government or this State or any agency or political subdivision thereof, when approved by the board of directors and not inconsistent with Articles 14A to 14L of this Chapter;
- (18) Act as fiscal agent for and receive deposits from the federal government, this State, or any agency or political subdivision thereof;

- (19) Contribute to, support, or participate in any nonprofit service facility whose services will benefit the credit union or its membership subject to such regulations as are prescribed by the Administrator;
- (20) Make donations or contributions to any civic, charitable or community organization as authorized by the board of directors, subject to such regulations as are prescribed by the Administrator;
- (21) Act as a custodian of qualified pension funds if permitted by federal law;
- (22) Purchase or make available insurance for its directors, officers, agents, employees, and members; and
- (23) Facilitate its members' purchase of goods and services in a manner which promotes the purposes of the credit union.
- (24) The board of directors may expel from the corporation any member who has not carried out his engagement with the corporation, or has been convicted of a criminal offense, or neglects or refuses to comply with the provisions of this Article or of the bylaws, or who habitually neglects to pay his debts, or shall become insolvent or bankrupt. The members at a regularly called meeting may expel from the corporation any member who has become intemperate or in any way financially irresponsible; no member shall be expelled until he has been informed in writing of the charges against him and an opportunity has been given him, after reasonable notice, to be heard thereon.
- (25) In accordance with rules and regulations promulgated by the Administrator of Credit Unions, subject to the advice and consent of the Credit Union Commission, engage in any activity in which credit unions could engage if they were operating as federally chartered credit unions, if on investigation, the Administrator of Credit Unions finds it necessary to preserve and protect the welfare of the credit unions and to promote the general economy of this State.
- (26) Subject to rules and regulations prescribed by the Administrator, act as trustee or custodian, and may receive reasonable compensation for so acting, under any written trust instrument or custodial agreement created or organized and forming a part of a deferred compensation plan for its members or groups or organization of its members, provided the funds of such plans are invested in savings or deposits of the credit union. All funds held may be commingled for appropriate purpose of investment, but individual records shall be kept by the credit union for each participant and shall show in proper detail all transactions engaged in under authority of this section.

A member may withdraw from a credit union by filing a written notice of his intention to withdraw.

The amounts paid in on shares or deposits by an expelled or withdrawing member, with any dividends credited to his shares and any interest accrued on his deposits to the date of expulsion or withdrawal shall be paid to such member, but in the order of expulsion or withdrawal, and only as funds therefor become available, after deducting any amounts due to the corporation by such member. The member shall have no other or further right in the credit union or to any of its benefits, but such expulsion or withdrawal shall not operate to relieve the member from any remaining liability to the corporation. (1915, c. 115, ss. 5, 16, 17, 23; C. S., ss. 5216-5218, 5231; 1925, c. 73, ss. 3, 10; 1935, c. 87; 1965, c. 956, s. 8; 1975, c. 538, s. 1; 1977, c. 559, s. 5.)

**Editor's Note.** — Session Laws 1975, c. 538, s. 4, makes the act effective July 1, 1975.

Session Laws 1975, c. 538, s. 1, effective July 1, 1975, repealed Articles 9 through 14 of this

Chapter and enacted in their place new Articles designated Articles 9 through 14A in the act, but which have been codified herein as Articles 14A through 14L. Where appropriate, the historical

citations to the repealed sections have been added to corresponding sections in the new Articles.

The 1977 amendment, effective July 1, 1977, added subdivisions (25) and (26) to the first paragraph.

**§ 54-109.22. Incidental powers.** — A credit union may exercise such incidental powers such as are necessary or requisite to enable it to promote and carry on most effectively its purposes. (1975, c. 538, s. 1.)

**§ 54-109.23 to 54-109.25:** Reserved for future codification purposes.

#### ARTICLE 14D.

##### *Membership.*

**§ 54-109.26. "Membership" defined.** — (a) The membership of a credit union shall be limited to and consist of the subscribers to the articles of incorporation and such other persons within the common bond set forth in the bylaws as have been duly admitted members, have paid any required entrance fee or membership fee, or both, have subscribed for one or more shares, and have paid the initial installment thereon, and have complied with such other requirements as the articles of incorporation or bylaws specify.

(b) Credit union membership may include groups having a common bond of similar occupation, association or interest, or groups who reside within an identifiable neighborhood, community, or rural district, or employees of a common employer, and members of the immediate family of such persons. (1915, c. 115, s. 6; C. S., s. 5230; 1925, c. 73, s. 3; 1935, c. 87; 1965, c. 956, s. 18; 1975, c. 538, s. 1.)

**Editor's Note.** — Session Laws 1975, c. 538, s. 4, makes the act effective July 1, 1975.

Session Laws 1975, c. 538, s. 1, effective July 1, 1975, repealed Articles 9 through 14 of this Chapter and enacted in their place new Articles designated Articles 9 through 14A in the act, but

which have been codified herein as Articles 14A through 14L. Where appropriate, the historical citations to the repealed sections have been added to corresponding sections in the new Articles.

**§ 54-109.27. Societies and other associations.** — Societies, and copartnerships composed primarily of individuals who are eligible to membership, and corporations whose stockholders are composed primarily of such individuals, may be admitted to membership in the same manner and under the same conditions as individuals, but may not borrow in excess of their shareholdings. Provided, however, secured loans in excess of shareholdings may be made to nonprofit societies, copartnerships, and corporations who are members. (1975, c. 538, s. 1; 1979, c. 809, s. 1.)

**Editor's Note.** — The 1979 amendment added the second sentence.

**§ 54-109.28. Other credit unions.** — Any credit union organized under Articles 14A to 14L of this Chapter may permit membership of any other credit union organized under Articles 14A to 14L of this Chapter or other acts. (1975, c. 538, s. 1.)

**§ 54-109.29. Members who leave field.** — Members who leave the field of membership may be permitted to retain their membership in the credit union as a matter of general policy of the board of directors. (1975, c. 538, s. 1.)

**§ 54-109.30. Liability of shareholders.** — A shareholder of any such corporation, unless the bylaws so provide, shall not be individually liable for the payment of its debts for an amount in excess of the par value of the shares which he owns or for which he has subscribed. (1975, c. 538, s. 1.)

**§ 54-109.31. Meetings of members.** — (a) The annual meeting and any special meetings of the members of the credit union shall be held at the time, place, and in the manner indicated by the bylaws.

(b) At all such meetings, a member shall have but one vote, irrespective of his shareholdings. No member may vote by proxy, but a member may vote by absentee ballot if the bylaws of the credit union so provide.

(c) A society, association, copartnership or corporation having membership in the credit union may be represented and have its vote cast by one of its members or shareholders, provided such person has been fully authorized by the organization's governing body.

(d) The board of directors may establish a minimum age of 16 years of age as a qualification to vote at meetings of the members.

(e) The board of directors may establish a minimum age of 18 years of age as a qualification to hold office. (1975, c. 538, s. 1.)

**§§ 54-109.32 to 54-109.34:** Reserved for future codification purposes.

## ARTICLE 14E.

### *Direction of Affairs.*

**§ 54-109.35. Election or appointment of officials.** — (a) The credit union shall be directed by a board of directors, at least five in number, to be elected at the annual members' meeting by and from the members. All members of the board shall hold office for such terms as the bylaws provide.

(b) The board of directors at its first meeting after its election shall appoint a supervisory committee from the membership (no more than one of whom may be a member of the board of directors and none a member of the credit committee) of not less than three members who shall serve for such terms as may be fixed by the bylaws; or in lieu thereof, the bylaws may authorize the board of directors to employ and use such clerical and auditing assistants as may be required to perform the duties required by G.S. 54-109.49. The board of directors may remove or suspend any member of the supervisory committee for neglect of duty, misfeasance, malfeasance, official misconduct, or for other good cause shown.

(c) The board of directors shall appoint a credit committee from the membership consisting of an odd number, not less than three, for such terms as the bylaws provide or, in lieu of a credit committee, appoint one or more loan officers from the membership and, in such instances, duties and responsibilities of the credit committee shall be carried out by such loan officer or officers. (1975, c. 538, s. 1.)

**Editor's Note.** — Session Laws 1975, c. 538, s. 4, makes the act effective July 1, 1975.

Session Laws 1975, c. 538, s. 1, effective July 1, 1975, repealed Articles 9 through 14 of this Chapter and enacted in their place new Articles designated Articles 9 through 14A in the act, but

which have been codified herein as Articles 14A through 14L. Where appropriate, the historical citations to the repealed sections have been added to corresponding sections in the new Articles.

**§ 54-109.36. Record of board and committee members.** — Within 15 days following the board of directors' initial or annual organization meeting, a record of the names and addresses of the members of the board, committees and all other officers of the credit union shall be filed with the Credit Union Division on forms provided by that Division. (1975, c. 538, s. 1.)

**§ 54-109.37. Vacancies.** — The board of directors shall fill any vacancies occurring in the board until successors elected at the next annual meeting have qualified. The board shall also fill vacancies in the credit and supervisory committees. (1975, c. 538, s. 1.)

**§ 54-109.38. Compensation of officials.** — No member of the board of directors or of the credit committee or supervisory committee shall be compensated for his service in this position, but providing reasonable life, health, accident and similar insurance protection for a director or committee member shall not be considered compensation. Directors and committee members, while on official business of the credit union, may be reimbursed for necessary expenses incidental to the performance of the business. (1975, c. 538, s. 1.)

**§ 54-109.39. Conflicts of interest.** — No director, committee member, officer, agent or employee of the credit union shall in any manner, directly or indirectly, participate in the deliberation upon or the determination of any question affecting his pecuniary interest or the pecuniary interest of any corporation, partnership, or association (other than the credit union) in which he is directly or indirectly interested. (1975, c. 538, s. 1.)

**§ 54-109.40. Executive officers.** — (a) At their organization meeting and within 30 days following each annual meeting of the members, the directors shall elect from their own number an executive officer, who may be designated as chairman of the board or president; a vice-chairman of the board or one or more vice-presidents; a treasurer; and a secretary. The treasurer and the secretary may be the same individual. The persons so elected shall be the executive officers of the corporation.

(b) The terms of the officers shall be one year, or until their successors are chosen and have duly qualified.

(c) The duties of the officers shall be prescribed in the bylaws.

(d) The board of directors may employ an officer in charge of operations whose title shall be either president and/or general manager; or, in lieu thereof, the board of directors may designate the treasurer or an assistant treasurer to act as general manager and be in active charge of the affairs of the credit union. (1975, c. 538, s. 1.)

**§ 54-109.41. Authority of directors.** — The board of directors shall have the general direction of the business affairs, funds, and records of the credit union. (1975, c. 538, s. 1.)

**§ 54-109.42. Executive committee.** — From the persons elected to the board, the board may appoint an executive committee of not less than three directors who may be authorized to act for the board in all respects, subject to such conditions and limitations as are prescribed by the board. (1975, c. 538, s. 1.)

**§ 54-109.43. Meetings of directors.** — The board of directors and the executive committee shall meet as often as the bylaws prescribe. (1915, c. 115, s. 8; C. S., s. 5232; 1975, c. 538, s. 1.)

**§ 54-109.44. Duties of directors.** — It shall be the duty of the directors to:

- (1) Act upon applications for membership or to appoint one or more membership officers to approve applications for membership under such conditions as the board prescribes. A record of a membership officer's approval or denial of membership shall be available to the board of directors for inspection. A person denied membership by a membership officer may appeal the denial to the board;
- (2) Purchase a blanket fidelity bond, in accordance with any rules and regulations of the Administrator, to protect the credit union against losses caused by occurrences covered therein such as fraud, dishonesty, forgery, embezzlement, misappropriation, misapplication, or unfaithful performance of duty by a director, officer, employee, member of an official committee, attorney-at-law or other agent;
- (3) Determine from time to time the interest rate or rates consistent with Articles 14A to 14L of this Chapter, which shall be charged on loans and to authorize interest refunds, if any, to members from income earned and received in proportion to the interest paid by them on such classes of loans and under such conditions as the board prescribes;
- (4) Fix from time to time the maximum amount which may be loaned to any one member;
- (5) Declare dividends on shares in the manner and form as provided in the bylaws; and determine the interest rate or rates which will be paid on deposits;
- (6) Set the number of shares and the amount of deposits which may be owned by a member, such limitations to apply alike to all members;
- (7) Have charge of the investment of surplus funds, except that the board of directors may designate an investment committee or any qualified individual to have charge of making investments under controls established by the board of directors;
- (8) Authorize the employment of such persons necessary to carry on the business of the credit union;
- (9) Authorize the conveyance of property;
- (10) Borrow or lend money to carry on the functions of the credit union;
- (11) Designate a depository or depositories for the funds of the credit union;
- (12) Suspend any or all members of the credit or supervisory committee for failure to perform their duties;
- (13) Appoint any special committees deemed necessary; and
- (14) Perform such other duties as the members from time to time direct, and perform or authorize any action not inconsistent with Articles 14A to 14L of this Chapter and not specifically reserved by the bylaws for the members. (1915, c. 115, s. 10; C. S., s. 5234; 1957, c. 989, s. 5; 1965, c. 956, s. 20; 1973, c. 199, s. 9; 1975, c. 538, s. 1.)

**§ 54-109.45. Authority of credit committee.** — The credit committee shall have the general supervision of all loans to members. (1915, c. 115, s. 11; C. S., s. 5235; 1961, c. 1187, s. 22; 1965, c. 956, s. 1; 1969, c. 69, s. 5; 1973, c. 199, s. 10; 1975, c. 538, s. 1.)

**§ 54-109.46. Meetings of credit committee.** — The credit committee shall meet as often as the business of the credit union requires and not less frequently than once a month to consider applications for loans. No loan shall be made unless it is approved by a majority of the committee who are present at the meeting at which the application is considered. (1915, c. 115, s. 11; C. S., s. 5235; 1961, c. 1187, s. 22; 1965, c. 956, s. 1; 1969, c. 69, s. 5; 1973, c. 199, s. 10; 1975, c. 538, s. 1.)

**§ 54-109.47. Loan officers.** — (a) The credit committee may appoint one or more loan officers and delegate the power to approve loans, subject to such limitations or conditions as the credit committee prescribes.

(b) Loan applications not approved by a loan officer shall be reviewed and acted upon by the credit committee. (1915, c. 115, s. 11; C. S., s. 5235; 1961, c. 1187, s. 22; 1965, c. 956, s. 1; 1969, c. 69, s. 5; 1973, c. 199, s. 10; 1975, c. 538, s. 1.)

**§ 54-109.48. When credit committee dispensed with.** — The credit committee may be dispensed with, and loan officer(s) empowered to approve or disapprove loans under conditions prescribed by the board of directors. In the event the credit committee is dispensed with, the procedures prescribed in G.S. 54-109.45, 54-109.46 and 54-109.47 do not apply, and no loans shall be made unless approved by the loan officer(s). (1915, c. 115, s. 11; C. S., s. 5235; 1961, c. 1187, s. 22; 1965, c. 956, s. 1; 1969, c. 69, s. 5; 1973, c. 199, s. 10; 1975, c. 538, s. 1.)

**§ 54-109.49. Duties of supervisory committee.** — The supervisory committee shall make or cause to be made an annual audit, in accordance with rules and regulations promulgated by the Administrator of Credit Unions, and shall submit a report of that audit to the board of directors and a summary of the report to the members at the next annual meeting of the credit union. The supervisory committee shall make or cause to be made such supplemental audits as deemed necessary by it or as may be ordered by the Administrator of Credit Unions. Any violation of this Article or of the bylaws or of any practice of the corporation which in the opinion of the supervisory committee is unsafe, unsound, or unauthorized, shall be reported to the board of directors and the Administrator of Credit Unions within seven days after its discovery. (1915, c. 115, s. 12; C. S., s. 5236; 1965, c. 956, s. 21; 1973, c. 199, s. 11; 1975, c. 538, s. 1.)

**§§ 54-109.50 to 54-109.52:** Reserved for future codification purposes.

## ARTICLE 14F.

### *Savings Accounts.*

**§ 54-109.53. Shares.** — (a) The capital of a credit union consists of the payments made by members on shares, undivided surplus, and reserves.

(b) Shares may be subscribed to, paid for and transferred in such manner as the bylaws prescribe.

(c) A certificate need not be issued to denote ownership of a share in a credit union. (1915, c. 115, s. 13; C. S., s. 5226; 1925, c. 73, s. 3; 1935, c. 87; 1965, c. 956, ss. 16, 17; 1975, c. 538, s. 1.)

**Editor's Note.** — Session Laws 1975, c. 538, s. 4, makes the act effective July 1, 1975.

Session Laws 1975, c. 538, s. 1, effective July 1, 1975, repealed Articles 9 through 14 of this Chapter and enacted in their place new Articles designated Articles 9 through 14A in the act, but

which have been codified herein as Articles 14A through 14L. Where appropriate, the historical citations to the repealed sections have been added to corresponding sections in the new Articles.

**§ 54-109.54. Dividends.** — The board of directors of any credit union may declare dividends as its bylaws provide. Dividends shall be paid on fully paid shares outstanding at the close of the accounting period, but shares which become fully paid by the tenth of any month of the period may be entitled to a

proportional part of such dividend, calculated from the first day of the month. (1915, c. 115, s. 22; C. S., s. 5223; 1925, c. 73, s. 3; 1935, c. 87; 1957, c. 989, s. 3; 1965, c. 956, s. 15; 1969, c. 69, ss. 3, 4; 1973, c. 199, s. 7; 1975, c. 538, s. 1.)

**§ 54-109.55. Deposits.** — A credit union may receive on deposit the savings of its members and also nonmembers in such amounts and upon such terms as the board of directors may determine and the bylaws shall provide. (1915, c. 115, s. 16; C. S., s. 5217; 1925, c. 73, s. 3; 1935, c. 87; 1975, c. 538, s. 1.)

**§ 54-109.56. Thrift accounts.** — Christmas clubs, vacation clubs, and other thrift accounts may be operated under conditions established by the board of directors. (1975, c. 538, s. 1.)

**§ 54-109.57. Shares and deposits for minors and in trust.** — Shares may be issued and deposits received in the name of a minor, and such shares and deposits may, in the discretion of the directors, be withdrawn by such minor or his parent or guardian, and in either case payments made on such withdrawals shall be valid. If shares are held or deposits made in trust, the name and residence of the beneficiary shall be disclosed and the account shall be kept in the name of such holder as trustee for such person. Such shares or deposits may, upon the death of the trustee, be withdrawn by the person for whom the shares were held or for whom such deposits were made, or by his legal representatives. (1915, c. 115, s. 14; C. S., s. 5227; 1975, c. 538, s. 1.)

**§ 54-109.58. Joint accounts.** — (a) A member may designate any person or persons to hold shares, deposits and thrift club accounts with him in joint tenancy with the right of survivorship, but no joint tenant, unless a member in his own right, shall be permitted to vote, obtain loans, or hold office or be required to pay an entrance or membership fee.

(b) Payment of part or all of such accounts to any of the joint tenants shall, to the extent of such payment, discharge the liability to all. (1975, c. 538, s. 1.)

**§ 54-109.59. Liens.** — The credit union shall have a lien on the shares, deposits and accumulated dividends or interest of a member in his individual, joint or trust account, for any sum past due the credit union from said member or for any loan endorsed by him. (1915, c. 115, s. 13; C. S., s. 5226; 1925, c. 73, s. 3; 1935, c. 87; 1965, c. 956, ss. 16, 17; 1975, c. 538, s. 1.)

**§ 54-109.60:** Repealed by Session Laws 1977, c. 559, s. 6, effective July 1, 1977.

**§ 54-109.61. Reduction in shares.** — (a) Whenever the losses of any credit union, resulting from a depreciation in value of its loans or investments or otherwise, exceed its undivided earnings and reserve fund so that the estimated value of its assets is less than the total amount due the shareholders, the credit union may by a majority vote of the members present at a special meeting called for that purpose order a reduction in the shares of each of its shareholders to divide the loss proportionately among the members.

(b) If the credit union thereafter realizes from such assets a greater amount than was fixed by the order of reduction, such excess shall be divided proportionately among the shareholders whose assets were reduced, but only to the extent of such reduction. (1975, c. 538, s. 1.)

**§§ 54-109.62 to 54-109.64:** Reserved for future codification purposes.

## ARTICLE 14G.

*Loans.*

**§ 54-109.65. Purposes, terms and interest rate.** — A credit union may loan to its members for such purpose and upon such security and terms as the board of directors prescribe, at rates of interest not exceeding twelve [percent] (12%) annual percentage rate, unless a greater rate not to exceed eighteen [percent] (18%) annual percentage rate is otherwise approved by the Credit Union Commission. Such action by the Commission will be uniform and apply to all credit unions.

The term "interest," as used in this section, shall not be deemed to include charges made by a credit union for appraisals of real or personal property; attorneys' fees for searching title to real property, preparing notes, deeds of trust, mortgages and closing loans; and recording fees. Rate of interest and terms of repayment shall appear on each note but the corporation may, for the purpose of making loans, discount and negotiate promissory notes and deduct in advance, from the proceeds of such loan, interest at a rate not to exceed the rate herein fixed, which shall be the legal rate for corporations organized under this Article, and such deductions shall be made upon the amount of the loan from the date thereof until the maturity of the final installment, notwithstanding that the principal amount of such loan is required to be repaid in such installments. (1915, c. 115, ss. 19, 20; 1917, c. 232, s. 4; C. S., ss. 5220, 5221; 1925, c. 73, s. 3; 1935, c. 87; 1955, c. 1135, s. 2; 1957, c. 989, s. 2; 1961, c. 1187, s. 1; 1965, c. 956, ss. 1, 12, 13; 1969, c. 69, s. 9; 1973, c. 199, ss. 5, 6; 1975, c. 538, s. 1.)

**Editor's Note.** — Session Laws 1975, c. 538, s. 4, makes the act effective July 1, 1975.

Session Laws 1975, c. 538, s. 1, effective July 1, 1975, repealed Articles 9 through 14 of this Chapter and enacted in their place new Articles designated Articles 9 through 14A in the act, but

which have been codified herein as Articles 14A through 14L. Where appropriate, the historical citations to the repealed sections have been added to corresponding sections in the new Articles.

**§ 54-109.66. Application.** — Every application for a loan shall be made in writing upon a form, which the board of directors prescribe. The application shall state the purpose for which the loan is desired, and the security, if any, offered. Each loan shall be evidenced by a written document. (1975, c. 538, s. 1.)

**§ 54-109.67. Loan limit.** — No loan shall be made to any member in an aggregate amount in excess of two hundred dollars (\$200.00), or ten percent (10%) of the credit union's unimpaired capital and surplus, whichever is greater, provided that no unsecured loan shall be greater than five thousand dollars (\$5,000). (1915, c. 115, s. 19; 1917, c. 232, s. 4; C. S., s. 5220; 1925, c. 73, s. 3; 1935, c. 87; 1955, c. 1135, s. 2; 1961, c. 1187, s. 1; 1965, c. 956, ss. 1, 12, 13; 1969, c. 69, s. 9; 1973, c. 199, s. 5; 1975, c. 538, s. 1.)

**§ 54-109.68. Security.** — In addition to generally accepted types of security, the endorsement of a note by a surety, comaker or guarantor, or assignment of shares, in a manner consistent with the laws of this State, shall be deemed security within the meaning of Articles 14A to 14L of this Chapter. The adequacy of any security shall be determined by the board of directors subject to Articles 14A to 14L of this Chapter and the bylaws. (1975, c. 538, s. 1.)

**§ 54-109.69. Installments.** — A member may receive a loan in installments, or in one sum, and may pay the whole or any part of his loan on any day on which the office of the credit union is open for business. (1975, c. 538, s. 1.)

**§ 54-109.70. Line of credit.** — A line of credit and advances may be granted to each member within guidelines established by the board of directors. Where a line of credit has been approved, no additional loan applications are required as long as the aggregate obligation does not exceed the limit of such line of credit. (1975, c. 538, s. 1.)

**§ 54-109.71. Other loan programs.** — (a) A credit union may participate in loans to credit union members jointly with other credit unions, corporations, or financial organizations.

(b) A credit union may participate in guaranteed loan programs of the federal and State government.

(c) A credit union may purchase the conditional sales contracts, notes and similar instruments of its members. (1975, c. 538, s. 1.)

**§§ 54-109.72 to 54-109.74:** Reserved for future codification purposes.

## ARTICLE 14H.

### *Insurance and Group Purchasing.*

**§ 54-109.75. Insurance for members.** — (a) A credit union may purchase or make available insurance for its members in amounts related to their respective ages, shares, deposits or loan balances or to any combination of them.

(b) A credit union may enter into cooperative marketing arrangements to facilitate its members' voluntary purchase of insurance including, but not by way of limitation, life insurance, disability insurance, accident and health insurance, property insurance, liability insurance, and legal expense insurance. (1975, c. 538, s. 1.)

**Editor's Note.** — Session Laws 1975, c. 538, s. 4, makes the act effective July 1, 1975.

Session Laws 1975, c. 538, s. 1, effective July 1, 1975, repealed Articles 9 through 14 of this Chapter and enacted in their place new Articles designated Articles 9 through 14A in the act, but

which have been codified herein as Articles 14A through 14L. Where appropriate, the historical citations to the repealed sections have been added to corresponding sections in the new Articles.

**§ 54-109.76. Liability insurance for officers.** — A credit union may purchase and maintain liability insurance on behalf of any person who is or was a director, officer, employee, or agent of the credit union, or who is or was serving at the request of the credit union as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity or arising out of such person's status as such, whether or not the credit union would have the power to indemnify such person against such liability. (1975, c. 538, s. 1.)

**§ 54-109.77. Group purchasing.** — A credit union may enter into cooperative marketing arrangements to facilitate its members' voluntary purchase of such goods and services as are in the interest of improving economic and social conditions of the members. (1975, c. 538, s. 1.)

**§ 54-109.78. Share and deposit insurance.** — (a) All credit unions established under this Chapter shall, no later than July 1, 1976, apply for insurance of member share and deposit accounts from any mutual deposit guaranty

association which qualifies under Article 7A of Chapter 54 of the General Statutes (Mutual Deposit Guaranty Associations), or from the National Credit Union Administration under the Federal Credit Union Act. All such credit unions shall, on or before January 1, 1977, obtain and thereafter maintain the above-mentioned insurance. A credit union which is unable to obtain a commitment for insurance of the share and deposit accounts within the time limit specified above shall be dissolved by action of the Administrator of Credit Unions or permitted to merge with another credit union. Provided, the Administrator may grant additional time to obtain the insurance commitment, upon satisfactory evidence that the credit union has made or is making a substantial effort to achieve the conditions precedent to issuance of the commitment. Granting of additional time or times to obtain the insurance commitment shall not extend later than January 1, 1978.

(b) All credit unions chartered under Articles 14A to 14L of this Chapter after ratification shall apply for and obtain insurance as a condition to granting the charter. (1975, c. 538, s. 1.)

**§ 54-109.79 to 54-109.81:** Reserved for future codification purposes.

## ARTICLE 14-I.

### *Investments.*

**§ 54-109.82. Investment of funds.** — The capital, deposits, undivided profits and reserve fund of the corporation may be invested in any of the following ways, and in such ways only:

- (1) They may be lent to the members of the corporation in accordance with the provisions of this Chapter.
- (2) In capital shares, obligations, or preferred stock issues of any agency or association organized either as a stock company, mutual association, or membership corporation, provided the membership or stockholdings, as the case may be, of such agency or association are confined or restricted to credit unions or organizations of credit unions, or provided the purposes for which such agency or association is organized or designed to service or otherwise assist credit union operations.
- (3) In obligations of the State of North Carolina or any subdivision thereof.
- (4) In obligations of the United States, including bonds and securities upon which payment of principal and interest is fully guaranteed by the United States.
- (5) They may be deposited to the credit of the corporation in savings banks, credit unions, savings and loan associations, State banks or trust companies incorporated under the laws of the State, or in national banks located therein.
- (6) In loans to other credit unions in any amount not to exceed twenty-five percent (25%) of the shares and unimpaired surplus of the lending credit union.
- (7) In an aggregate amount not to exceed twenty-five percent (25%) of the allocations to the reserve fund in any agency or association of the type described in subdivision (2) hereof, provided the purposes of any such agency or association are designed to assist in establishing and maintaining liquidity, solvency, and security in credit union operations.
- (8) In the North Carolina Savings Guaranty Corporation.
- (9) In any form of investment allowed by law to the State Treasurer under G.S. 147-69.1.

- (10) Debentures which are issued by an agency of the United States government.
- (11) In the College Foundation in any amount not to exceed ten percent (10%) of the shares and unimpaired surplus of the investing credit union.
- (12) They may be placed on time deposits in any banks insured by the Federal Deposit Insurance Corporation or may be deposited or may be invested in any savings or building and loan association insured by the Federal Savings and Loan Insurance Corporation. (1915, c. 115, s. 18; 1917, c. 232, ss. 2, 3; C.S., s. 5219; 1925, c. 73, ss. 12, 13, 14; 1935, c. 87; 1939, c. 400, s. 1; 1947, c. 781; 1965, c. 956, ss. 10, 11; 1969, c. 69, s. 1; 1973, c. 199, s. 4; c. 1255, s. 1; 1975, c. 538, s. 1; 1977, c. 559, s. 7; 1979, c. 467, s. 23; c. 809, s. 2.)

**Editor's Note.** — Session Laws 1975, c. 538, s. 4, makes the act effective July 1, 1975.

Session Laws 1975, c. 538, s. 1, effective July 1, 1975, repealed Articles 9 through 14 of this Chapter and enacted in their place new Articles designated Articles 9 through 14A in the act, but which have been codified herein as Articles 14A through 14L. Where appropriate, the historical citations to the repealed sections have been

added to corresponding sections in the new Articles.

The 1977 amendment, effective July 1, 1977, added subdivision (11).

The first 1979 amendment rewrote subdivision (9).

The second 1979 amendment added subdivision (12).

## §§ 54-109.83 to 54-109.85: Reserved for future codification purposes.

### ARTICLE 14J.

#### *Reserve Allocations.*

**§ 54-109.86. Transfers to regular reserve.** — (a) At the end of each accounting period the gross income shall be determined. From this amount, there shall be set aside, as a regular reserve against losses on loans and against such other losses as may be specified in regulations prescribed pursuant to law, sums in accordance with the following schedule:

- (1) A credit union in operation for more than four years and having assets of five hundred thousand dollars (\$500,000) or more shall set aside
  - (a) Ten per centum (10%) of gross income until the regular reserve shall equal four per centum (4%) of the total of outstanding loans and risk assets, then
  - (b) Five per centum (5%) of gross income until the regular reserve shall equal six per centum (6%) of the total of outstanding loans and risk assets.
- (2) A credit union in operation less than four years or having assets of less than five hundred thousand dollars (\$500,000) shall set aside
  - (a) Ten per centum (10%) of gross income until the regular reserve shall equal seven and one-half per centum (7½%) of the total of outstanding loans and risk assets, then
  - (b) Five per centum (5%) of gross income until the regular reserve shall equal ten per centum (10%) of the total outstanding loans and risk assets.
- (3) Whenever the regular reserve falls below the stated per centum of the total of outstanding loans and risk assets, it shall be replenished by regular contributions in such amounts as may be determined by the administrator to maintain the stated reserve goals.

(b) The administrator, with the advice and consent of the Credit Union Commission, may increase or decrease the reserve requirement set forth in subsection (a) of this section when such an increase or decrease is deemed necessary or desirable in order to conform to the reserve requirements of federally chartered Credit Unions.

(c) In addition to such regular reserve, special reserves to protect the interests of members shall be established:

(1) When required by regulation; or

(2) When found by the administrator, in any special case, to be necessary for that purpose.

(d) Nothing in this section shall be construed as limiting the amount that a credit union may set apart to its reserve fund. (1915, c. 115, s. 21; C.S., s. 5222; 1939, c. 400, s. 2; 1955, c. 1135, s. 1; 1969, c. 69, ss. 2, 10; 1975, c. 538, s. 1; 1979, c. 293.)

**Editor's Note.** — Session Laws 1975, c. 538, s. 4, makes the act effective July 1, 1975.

Session Laws 1975, c. 538, s. 1, effective July 1, 1975, repealed Articles 9 through 14 of this Chapter and enacted in their place new Articles designated Articles 9 through 14A in the act, but which have been codified herein as Articles 14A

through 14L. Where appropriate, the historical citations to the repealed sections have been added to corresponding sections in the new Articles.

The 1979 amendment rewrote subsections (a) and (b), and substituted "regulation" for "regulations" in subdivision (1) of subsection (c).

**§ 54-109.87. Use of regular reserve.** — The regular reserve shall belong to the credit union and shall be used to meet losses except those resulting from an excess of expenses over income and shall not be distributed except on liquidation of the credit union, or in accordance with a plan approved by the Administrator of Credit Unions. (1975, c. 538, s. 1.)

**§ 54-109.88. "Risk assets" defined.** — For the purpose of establishing the reserves required by G.S. 54-109.86, all assets except the following shall be considered risk assets:

- (1) Cash on hand.
- (2) Deposits and shares in federal or State banks, savings and loan associations, and credit unions.
- (3) Assets which are issued by, fully guaranteed as to principal and interest by, or due from the U.S. government, its agencies, the Federal National Mortgage Association, or the Government National Mortgage Association.
- (4) Loans to other credit unions.
- (5) Loans to students insured under the provision of Title IV, Part B of the Higher Education Act of 1965 (20 U.S.C. 1071, et seq.) or similar state insurance programs.
- (6) Loans insured under Title I of the National Housing Act (12 U.S.C. 1703) by the Federal Housing Administration.
- (7) Shares or deposits in central credit unions organized under Article 14-I of this Chapter of any other State act or of the Federal Credit Union Act.
- (8) Common trust investments which deal in investments authorized by Articles 14A to 14L of this Chapter.
- (9) Prepaid expenses.
- (10) Accrued interest on nonrisk investments.
- (11) Furniture and equipment.
- (12) Land and buildings.
- (13) Loans secured by shares.

- (14) Deposits in mutual savings guaranty associations which qualify under Article 7A of Chapter 54 of the General Statutes.
- (15) Investments in the College Foundation. (1975, c. 538, s. 1; 1977, c. 559, s. 8.)

**Editor's Note.** — The 1977 amendment, effective July 1, 1977, added subdivision (15).

**§ 54-109.89 to 54-109.91:** Reserved for future codification purposes.

## ARTICLE 14K.

### *Change in Corporate Status.*

**§ 54-109.92. Suspension.** — (a) If it appears that any credit union is bankrupt or insolvent, or that it has willfully violated Articles 14A to 14L of this Chapter, or is operating in an unsafe or unsound manner, the Administrator of Credit Unions shall issue an order temporarily suspending the credit union's operations for not more than 90 days. The board of directors shall be given notice by registered mail of such suspension, which notice shall include a list of the reasons for such suspension, and/or a list of the specific violations of Articles 14A to 14L of this Chapter. The Administrator of Credit Unions shall also notify the members of the Credit Union Commission of any suspension.

(b) Upon receipt of such suspension notice, the credit union shall cease all operations, except those authorized by the Administrator. The board of directors shall then file with the Administrator a reply to the suspension notice, and may request a hearing to present a plan of corrective actions proposed if it desires to continue operations. The board may request that the credit union be declared insolvent and a liquidating agent be appointed.

(c) Upon receipt from the suspended credit union of evidence that the conditions causing the order of suspension have been corrected, the Administrator may revoke the suspension notice, permit the credit union to resume normal operations, and notify the Commission of such action.

(d) If the Administrator, after issuing notice of suspension and providing an opportunity for a hearing, rejects the credit union's plan to continue operations, he may appoint an operating officer or trustee to correct the conditions causing the order of suspension, or he may issue a notice of involuntary liquidation and appoint a liquidating agent. The credit union may request the appropriate court to stay execution of such action. Involuntary liquidation may not be ordered prior to the conclusion of suspension procedures outlined in this section.

(e) If, within the suspension period, the credit union fails to answer the suspension notice or request a hearing, the Administrator may then revoke the credit union's charter, appoint a liquidating agent and liquidate the credit union. (1975, c. 538, s. 1; 1977, c. 559, s. 9.)

**Editor's Note.** — Session Laws 1975, c. 538, s. 4, makes the act effective July 1, 1975.

Session Laws 1975, c. 538, s. 1, effective July 1, 1975, repealed Articles 9 through 14 of this Chapter and enacted in their place new Articles designated Articles 9 through 14A in the act, but which have been codified herein as Articles 14A through 14L. Where appropriate, the historical

citations to the repealed sections have been added to corresponding sections in the new Articles.

The 1977 amendment, effective July 1, 1977, inserted "he may appoint an operating officer or trustee to correct the conditions causing the order of suspension, or" in the first sentence of subsection (d).

**§ 54-109.93. Liquidation.** — (a) A credit union may elect to dissolve voluntarily and liquidate its affairs in the manner prescribed in this section.

(b) The board of directors shall adopt a resolution recommending the credit union be dissolved voluntarily, and directing that the question of liquidation be submitted to the members.

(c) Within 10 days after the board of directors decides to submit the question of liquidation to the members, the president shall notify the Administrator of Credit Unions thereof in writing, setting forth the reasons for the proposed action. Within 10 days after the members act on the question of liquidation, the president shall notify the Administrator in writing as to whether or not the members approved the proposed liquidation.

(d) As soon as the board of directors decides to submit the question of liquidation to the members, payment on shares, withdrawal of shares, making any transfer of shares to loans and interest, making investments of any kind, and granting loans shall be suspended pending action by members on the proposal to liquidate. On approval by the members of such proposal, all such business transactions shall be permanently discontinued. Necessary expenses of operation shall, however, continue to be paid on authorization of the board of directors or liquidating agent during the period of liquidation.

(e) For a credit union to enter voluntary liquidation, approval by a majority of the members in writing or by a two-thirds majority of the members present at a regular or special meeting of the members is required. Where authorization for liquidation is to be obtained at a meeting of the members, notice in writing shall be given to each member, by first-class mail, at least 10 days prior to such meeting.

(f) A liquidating credit union shall continue in existence for the purpose of discharging its debts, collecting and distributing its assets, and doing all acts required in order to wind up its business and may sue and be sued for the purpose of enforcing such debts and obligations until its affairs are fully adjusted.

(g) The board of directors or the liquidating agent shall use the assets of the credit union to pay: first, expenses incidental to liquidating including any surety bond that may be required; second, any liability due nonmembers; third, deposits and special purpose thrift accounts as provided in Articles 14A to 14L of this Chapter. Assets then remaining shall be distributed to the members proportionately to the shares held by each member as of the date dissolution was voted.

(h) As soon as the board of directors or the liquidating agent determines that all assets from which there is a reasonable expectancy of realization have been liquidated and distributed as set forth in this section, the Administrator of Credit Unions shall issue to such corporation, in duplicate, a certificate of dissolution which shall be filed by the corporation in the office of the register of deeds of the county in which the corporation has its place of business. The corporation shall then be dissolved and its certificate of incorporation revoked. All pertinent books and records of the liquidating credit union shall be retained by the liquidating agent and/or filed with the Credit Union Division and kept for a minimum period not to exceed five years. The liquidating agent's fee, if any, shall be set by the Administrator of Credit Unions. (1915, c. 115, s. 24; C. S., s. 5224; 1925, c. 73, ss. 3, 15; 1935, c. 87; 1957, c. 989, s. 4; 1965, c. 956, s. 1; 1967, c. 823, s. 11; 1975, c. 538, s. 1.)

**§ 54-109.94. Merger.** — Any credit union may, with the approval of the Administrator of Credit Unions, merge with another credit union subject to the rules and regulations set forth by the Administrator of Credit Unions. (1975, c. 538, s. 1.)

**§ 54-109.95. Conversion of charter.** — (a) A credit union chartered under the laws of this State may be converted to a credit union chartered under the laws of any other state or under the laws of the United States, subject to regulations issued by the Administrator of the Credit Union Division.

(b) A credit union chartered under the laws of the United States or of any other state may convert to a credit union chartered under the laws of this State. To effect such a conversion, a credit union must comply with all the requirements of the jurisdiction under which it was originally chartered and the requirements of the Administrator of Credit Unions and file proof of such compliance with said Administrator. (1965, c. 956, s. 9; 1975, c. 538, s. 1.)

**§§ 54-109.96 to 54-109.98:** Reserved for future codification purposes.

## ARTICLE 14L.

### *Taxation.*

**§ 54-109.99. Restriction of taxation.** — The corporation shall be deemed an institution for savings, and together with all accumulations therein shall not be taxable under any law which shall exempt building and loan associations or institutions for savings from taxation; nor shall any law passed taxing corporations in any form, or the shares thereof, or the accumulations therein, be deemed to include corporations doing business in pursuance of the provisions of this Article, unless they are specifically named in such law. The shares of credit unions, being hereby regarded as a system for saving, shall not be subject to any stock-transfer tax either when issued by the corporation or transferred from one member to another. (1915, c. 115, s. 26; C. S., s. 5225; 1925, c. 73, ss. 3, 16; 1935, c. 87; 1975, c. 538, s. 1.)

**Editor's Note.** — Session Laws 1975, c. 538, s. 4, makes the act effective July 1, 1975.

Session Laws 1975, c. 538, s. 1, effective July 1, 1975, repealed Articles 9 through 14 of this Chapter and enacted in their place new Articles designated Articles 9 through 14A in the act, but

which have been codified herein as Articles 14A through 14L. Where appropriate, the historical citations to the repealed sections have been added to corresponding sections in the new Articles.

## ARTICLE 15.

### *Central Associations.*

#### **§ 54-110. Central association.**

(g) Section 54-109.21 shall not apply to a central association, and such an association shall have power to borrow money from any source in amounts not in excess of 10 times the amount of its capital and reserve fund.

(i) Section 54-109.82(6) shall not apply to a central association, and such association shall have the power to invest in loans to other credit unions in such amounts as approved by its loan officer and/or credit committee.

(1975, c. 538, ss. 2, 3.)

**Editor's Note.** — The 1975 amendment, effective July 1, 1975, substituted "Section 54-109.21" for "Section 54-84" in subsection (g) and substituted "Section 54-109.82(6)" for "G.S. 54-86(6)" in subsection (i).

As the rest of the section was not changed by the amendment, only subsections (g) and (i) are set out.

## SUBCHAPTER IV. COOPERATIVE ASSOCIATIONS.

### ARTICLE 16.

#### *Organization of Associations.*

**§ 54-117. General corporation law applied; dealing in products of, or renting to, nonmembers.**

This section does not convert a cooperative association into a general corporation, does not destroy the identity of the cooperative, and does not destroy the relationship between the tenant-shareholder and the owner-cooperative,

which is based primarily on the long-term proprietary lease rather than the corporate stock. *Sanders v. Tropicana*, 31 N.C. App. 276, 229 S.E.2d 304 (1976).

### ARTICLE 17.

#### *Stockholders and Officers.*

#### **54-120. Ownership of shares limited.**

**Directors' Authority to Enforce Transfer Restrictions.** — There is no applicable general corporation law which would supplant the authority of the defendant cooperative apartment association's board of directors in the

enforcement of the transfer restrictions contained in the proprietary lease and authorized by this section. *Sanders v. Tropicana*, 31 N.C. App. 276, 229 S.E.2d 304 (1976).

## SUBCHAPTER V. MARKETING ASSOCIATIONS.

### ARTICLE 19.

#### *Purpose and Organization.*

**§ 54-131. Who may organize.** — Three or more persons engaged in the production of agricultural products may form a nonprofit, cooperative association, with or without capital stock, under the provisions of this Subchapter. (1921, c. 87, s. 3; C.S., s. 5259(c); 1979, c. 908, s. 1.)

**Editor's Note.** — The 1979 amendment substituted "Three or more persons" for "Five or more persons" at the beginning of the section.

**§ 54-134. Articles of incorporation.** — Each association formed under this Subchapter must prepare and file articles of incorporation, setting forth:

- (1) The name of the association.
- (2) The purposes for which it is formed.
- (3) The place where its principal business will be transacted.
- (4) The period of duration, which may be perpetual. When the articles of incorporation fail to state the period of duration, it shall be considered perpetual. Any association heretofore or hereafter organized for a period less than perpetual, may by amendment to its articles of incorporation, extend the period of its duration for a specified period or perpetually.
- (5) The names and addresses of those who are to serve as directors for the first term or until the election of their successors.

(6) If organized without capital stock, whether the property rights and interest of each member shall be equal or unequal; and if unequal, the article shall set forth the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member may and shall be determined and fixed; and this association shall have the power to admit new members who shall be entitled to share in the property of the association with the old members in accordance with such general rule or rules. This provision of the articles of incorporation shall not be altered, amended, or repealed except by the written consent or the vote of three fourths of the members.

(7) If organized with capital stock, the amount of such stock and the number of such shares into which it is divided and the par value thereof. The capital stock may be divided into preferred and common stock. If so divided, the articles of incorporation must contain a statement of the number of shares of stock to which preference is granted and the number of shares of stock to which no preference is granted and the nature and extent of the preference and the privileges granted to each.

In addition to the foregoing, the petition for articles of incorporation may contain any provision consistent with law with respect to management, regulation, government, financing, indebtedness, membership, the establishment of voting districts and the election of delegates for representative purposes, the issuance, retirement and transfer of its stock, if formed with capital stock, or any provisions relative to the way or manner in which it shall operate with respect to its members, officers, or directors, and any other provisions relating to its affairs; provided that nothing set forth in this paragraph shall be construed as limiting any of the rights or powers otherwise given to such associations.

The articles must be subscribed by the incorporators and acknowledged by one of them before an officer authorized by the law of this State to take and certify acknowledgments of deeds and conveyances; and shall be filed as provided in G.S. 55A-4; and when so filed the said articles of incorporation, or certified copies thereof, shall be received in all the courts of this State, and other places, as prima facie evidence of the facts contained therein, and of the due incorporation of such association. A certified copy of the articles of incorporation shall also be filed with the Chief of the Division of Markets. (1921, c. 87, s. 8; C.S., s. 5259(f); 1935, c. 230, ss. 3, 4; 1963, c. 1168, ss. 4, 5; 1979, c. 908, s. 2.)

**Editor's Note.** — The 1979 amendment deleted "(not less than five)" after "addresses" in subdivision (5).

**§ 54-136. Bylaws.** — Each association incorporated under this Subchapter must, within 30 days after its incorporation, adopt for its government and management a code of bylaws, not inconsistent with the powers granted by this Subchapter. A majority vote of a quorum of the members or stockholders attending a meeting, of which notice of the proposed bylaw or bylaws shall have been given, is sufficient to adopt or amend the bylaws. Each association under its bylaws may also provide for any or all of the following matters:

- (1) The time, place, and manner of calling and conducting its meetings.
- (2) The number of stockholders or members constituting a quorum.
- (3) The right of members or stockholders to vote by proxy or by mail, or by both, and the conditions, manner, form, and effects of such votes.
- (4) The number of directors constituting a quorum.
- (5) The qualifications, compensations, and duties and terms of office of directors and officers; time of their election, and the mode and manner of giving notice thereof.

- (6) Penalties for violations of the bylaws.
- (7) The amount of entrance, organization, and membership fees, if any; the manner and method of collection of the same, and the purposes for which they may be used.
- (8) The amount which each member or stockholder shall be required to pay annually or from time to time, if at all, to carry on the business of the association, the charge, if any, to be paid by each member or stockholder for services rendered by the association to him, and the time of payment and the manner of collection; and the marketing contract between the association and its members or stockholders which every member or stockholder may be required to sign.
- (9) The number and qualification of members or stockholders of the association and the conditions precedent to membership or ownership of common stock; the method, time, and manner of permitting members to withdraw or the holders of common stock to transfer their stock; the manner of assignment and transfer of the interest of members, and of the shares of common stock; the conditions upon which, and the time when membership of any member shall cease; the automatic suspension of the rights of a member when he ceases to be eligible to membership in the association, and mode, manner, and effect of the expulsion of a member; manner of determining the value of a member's interest and provision for its purchase by the association upon the death or withdrawal of a member or stockholder, or upon the expulsion of a member or forfeiture of his membership, or at the option of the association, by conclusive appraisal by the board of directors.

Upon the death, withdrawal or expulsion of a member, the board of directors of the association shall, within one year, cause to be paid to such member or his estate one hundred percent (100%) of all amounts due him for any and all raw products which have been delivered by him to the association. All other amounts which might be due for capital stock, certificates of interest, reserves or on account of any other equity credits shall be payable in accordance with the charter or bylaws of the association.

Notwithstanding the foregoing provisions of this section, any association may amend its articles of incorporation to provide that thereafter any bylaw or bylaws of the association may be amended or repealed, or any new bylaw may be adopted, either by the members or by the board of directors, but if the members amend any bylaw or bylaws or adopt any new bylaw or bylaws, such bylaw or bylaws shall not thereafter be amended or repealed by the board of directors, and if the members repeal any bylaw or bylaws, such bylaw or bylaws shall not be readopted by the board of directors; provided, however, that no bylaw shall be adopted by the board of directors which shall require a higher number or percentage of members to be present or represented at a members' meeting for the purpose of constituting a quorum, or a higher number or percentage of such quorum to take action, than was the case before the power to alter, amend, or repeal the bylaws was conferred upon the board of directors. (1921, c. 87, s. 10; C.S., s. 5259(h); 1935, c. 230, s. 6; 1963, c. 1168, s. 7; 1979, c. 543.)

**Editor's Note.** — The 1979 amendment substituted the present second paragraph for one which read: "In case of the withdrawal or expulsion of a member the board of directors shall equitably and conclusively appraise his

property interests in the association, and shall fix the amount thereof in money, which shall be paid to him within one year after such expulsion or withdrawal."

execute and enforce all laws which may be enacted relating to stockholders' rights and to the affairs of the association in this Chapter. The powers, duties, authority and liability of the officers upon the

## ARTICLE 20.

### *Members and Officers.*

**§ 54-146. Directors; election.** — (a) The affairs of the association shall be managed by a board of not less than three directors, elected by the members or stockholders from their own number. The bylaws may provide that the territory in which the association has members shall be divided into districts, and that the directors shall be elected according to such districts. In such case the bylaws shall specify the number of directors to be elected by each district, the manner and method of reapportioning the directors and of redistricting the territory covered by the association. The bylaws may provide that primary elections should be held in each district to elect the directors apportioned to such districts, and the result of all such primary elections must be ratified by the next regular meeting of the association.

(1979, c. 908, s. 3.)

**Editor's Note.** — The 1979 amendment substituted "not less than three directors" for "not less than five directors" near the middle of the first sentence of subsection (a).

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

The address where its principal office is to be located in the State must not so closely resemble the name of an existing corporation doing business under the laws of the State as to be likely to cause confusion.

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## Chapter 54A.

### Capital Stock Savings and Loan Associations.

#### Article 1.

##### **Stock-Owned Associations.**

**Sec.**

- 54A-1. Stock-owned associations permitted.
- 54A-2. Statutes and regulations pertaining to mutual associations and private corporations shall apply.
- 54A-3. Under control of Administrator of the Savings and Loan Division.
- 54A-4 to 54A-8. [Reserved.]

#### Article 2.

##### **Organization.**

- 54A-9. How incorporated.
- 54A-10. Administrator to consider application.
- 54A-11. Amendments to certificate.
- 54A-12. Certification of certificate; when to begin business.

**Sec.**

- 54A-13. Conversion of mutual savings and loan associations to stock-owned.
- 54A-14 to 54A-17. [Reserved.]

#### Article 3.

##### **Operation of Stock-Owned Associations.**

- 54A-18. Rules and regulations.
- 54A-19. Profits and permanent capital reserve.
- 54A-20. Penalty for violation.
- 54A-21 to 54A-25. [Reserved.]

#### Article 4.

##### **Deposits.**

- 54A-26. [Repealed.]
- 54A-27. No maximum on interest paid on deposits.

## ARTICLE 1.

### *Stock-Owned Associations.*

**§ 54A-1. Stock-owned associations permitted.** — In addition to the savings and loan associations described in Chapter 54, savings and loan associations may be organized, incorporated and operated under this Chapter and owned by holders of capital stock in the association. Such associations shall be known as "stock-owned" savings and loan associations. Savings and loan associations organized under Chapter 54 shall be known as "mutual savings" and loan associations. (1977, c. 543, s. 1; 1979, c. 798, s. 1.)

**Cross Reference.** — As to the applicability of statutory provisions relating to building and loan associations or savings and loan associations to stock-owned savings and loan associations, see § 54-1(b).

**Editor's Note.** — The 1979 amendment repealed the former last sentence, which read: "No mutual savings and loan association shall be

allowed to convert to a stock-owned savings and loan association under the provisions of this Chapter."

Session Laws 1977, c. 543, s. 3, makes this Chapter effective July 1, 1977.

For a survey of 1977 commercial law, see 56 N.C.L. Rev. 915 (1978).

**§ 54A-2. Statutes and regulations pertaining to mutual associations and private corporations shall apply.** — (a) Except as otherwise provided in this Chapter the provisions of Chapter 54 and the regulations promulgated thereunder shall apply to stock-owned savings and loan associations.

(b) All provisions of law relating to private corporations including the provisions of Chapter 55, not inconsistent with this Chapter or with the proper business of savings and loan associations shall apply to stock-owned savings and loan associations. (1977, c. 543, s. 1.)

**§ 54A-3. Under control of Administrator of the Savings and Loan Division.** — Stock-owned savings and loan associations shall be under the supervision of the Administrator of the Savings and Loan Division. It shall be his duty to

execute and enforce all laws which are now or may hereafter be enacted relating to stock-owned savings and loan associations as defined in this Chapter. The powers, duties, and functions granted to or imposed by this Chapter upon the Administrator of the Savings and Loan Division shall be exercised by him subject to the provisions of Article 4 of this Chapter. For the more complete and thorough enforcement of the provisions of this Chapter, the Administrator of the Savings and Loan Division is hereby empowered to promulgate such rules, regulations, and instructions, not inconsistent with the provisions of this Chapter, as may in his opinion be necessary to carry out the provisions of this Chapter, and to provide adequate protection for the interests of the depositories, creditors, stockholders and the public. (1977, c. 543, s. 1.)

**§§ 54A-4 to 54A-8:** Reserved for future codification purposes.

## ARTICLE 2.

### *Organization.*

**§ 54A-9. How incorporated.** — (a) In order to incorporate a stock-owned savings and loan association, the proposed incorporators, not less than 10 in number, shall, by a certificate of incorporation under their hands and seals set forth:

- (1) The name of the corporation, which must not so closely resemble the name of an existing corporation doing business under the laws of this State as to be likely to mislead the public.
- (2) The address where its principal office is to be located in this State, including county and city or town, and street and number; and the name of its registered agent and the address of its registered office including county and city or town, and street and number.
- (3) The period of duration, which may be perpetual. When the certificate fails to state the period of duration, it shall be considered perpetual.
- (4) The purposes for which the corporation is formed, which shall be limited to purposes permitted under the laws of this State for stock-owned savings and loan associations.
- (5) With respect to the shares which the associations shall have authority to issue:
  - a. If the shares are to have a par value, the number of such shares and the par value of each share;
  - b. If the shares are to be without par value, the number of such shares;
  - c. If the shares are to be of both kinds mentioned in paragraphs a and b of subdivision (5) of this section, particulars in accordance with those paragraphs;
  - d. If the shares are to be divided into classes, or into series within a class of preferred or special shares, the certificate of incorporation shall also set forth a designation of each class, with a designation of each series within a class, and a statement of the preferences, limitations and relative rights of the shares of each class or series.
- (6) The minimum amount of consideration for its shares to be received by the association before it shall commence business.
- (7) The names and addresses of all the subscribers for stock, and the number of shares subscribed by each.
- (8) A statement as to whether stockholders have preemptive rights to acquire additional or treasury shares of the corporation and any provision limiting or denying said rights.

- (9) The number of directors not less than five constituting the initial board of directors (who may be classified in accordance with the provisions of G.S. 55-26) and the names and addresses of each person who is to serve as a director until the first meeting of shareholders or until his successor be elected and qualified.
- (10) The names and addresses of the incorporators.
- (11) The certificate shall be signed and sealed by the incorporators.  
(b) The certificate of incorporation shall be signed by the original incorporators, or a majority of them not less than 10, and shall be proved or acknowledged before an officer duly authorized under the laws of this State to take proof or acknowledgment of deeds, and shall be filed in the office of the Secretary of State. The Secretary of State shall forthwith transmit to the Administrator of the Savings and Loan Division a copy of said certificate of incorporation, and shall not issue or record the same until duly authorized so to do by the Administrator of the Savings and Loan Division as hereinafter provided. (1977, c. 543, s. 1.)

**§ 54A-10. Administrator to consider application.** — (a) Upon receipt from the Secretary of State of the certificate of incorporation of a proposed stock-owned association, the Administrator of the Savings and Loan Division shall examine all the facts connected with the proposed association. If it appears that such association complies with the requirements of this section, and is otherwise lawfully entitled to commence the business for which it is organized, the Administrator of the Savings and Loan Division shall so certify to the Secretary of State, who shall issue and record the certificate of incorporation.

(b) The Administrator of the Savings and Loan Division shall certify the certificate of incorporation of a proposed stock-owned association when all of the following criteria are met:

- (1) The proposed corporation has subscriptions for capital stock in an amount determined by the Administrator of the Savings and Loan Division to be sufficient for the safe and proper operation of the corporation, but in no event less than three hundred fifty thousand dollars (\$350,000).
- (2) The proposed association has set aside as a permanent capital reserve, an amount of funds determined by the Administrator of the Savings and Loan Division to be sufficient for the safe and proper operation of the association, but in no event less than three hundred fifty thousand dollars (\$350,000).
- (3) All subscriptions for capital stock of the proposed association have been purchased with legal tender of the United States.
- (4) All initial stockholders of the proposed association are natural persons and residents of North Carolina.
- (5) No stockholders of the proposed association own or control more than ten percent (10%) of the stock in the association. Notwithstanding any other provisions of this Chapter, stock ownership in a stock-owned savings and loan association shall not be held by any other financial institution.
- (6) The character, general fitness, and responsibility of the stockholders of the proposed corporation command the confidence of the community where the association is to be located.
- (7) The public convenience and advantage will be served by the establishment of the proposed association and there is a reasonable demand and necessity in the community to be served by the proposed association.
- (8) The name of the proposed association will not mislead the public; is not the same as an existing savings and loan association or so similar to the

name of an existing association as to mislead the public; and contains the wording "corporation," "incorporated," "limited" or "company," an abbreviation of one of such words or other words sufficient to distinguish stock-owned savings and loan associations from mutual savings and loan associations. (1977, c. 543, s. 1; 1979, c. 214, s. 2.)

**Editor's Note.** — The 1979 amendment, effective June 1, 1979, added "and there is a reasonable demand and necessity in the community to be served by the proposed association" at the end of subdivision (7) of subsection (b).

Session Laws 1979, c. 214, s. 4, provides: "This act shall become effective on June 1, 1979, but shall not apply to any pending applications filed prior to effective date."

**§ 54A-11. Amendments to certificate.** — Any addition, alteration or amendment of the certificate of incorporation of any stock-owned savings and loan association shall be governed by the provisions of Article 8, Chapter 55 of the General Statutes except to the extent that said provisions are inconsistent with this Chapter or with the business of stock-owned savings and loan associations. Any such addition, alteration or amendment shall be filed with the Secretary of State and register of deeds in the county where the principal office is located, and examined by the Administrator of the Savings and Loan Division in the manner provided for certificates of incorporation in G.S. 54A-9 and 54A-10. (1977, c. 543, s. 1.)

**§ 54A-12. Certification of certificate; when to begin business.** — (a) Upon receipt of such certificate from the Administrator of the Savings and Loan Division, the Secretary of State shall, if said certificate of incorporation be in accordance with law, cause the same to be recorded in his office in a book to be kept for that purpose, and known as the corporation book, and he shall, upon the payment of the organization tax and fees, certify under his official seal two copies of the said certificate of incorporation and probates, one of which shall forthwith be recorded in the office of the register of deeds of the county where the principal office of said corporation in this State shall or is to be located, in a book to be known as the record of incorporations, and the other certified copy shall be filed in the office of the Administrator of the Savings and Loan Division, and thereupon the said persons shall be a body politic and corporate under the name stated in such certificate. The said certificate of incorporation, or a copy thereof, duly certified by the Secretary of State or the register of deeds of the county in which the same is recorded, or by the Administrator of the Savings and Loan Division, under their respective seals, shall be evidence in all courts and places, and shall, in all judicial proceedings, be deemed *prima facie* evidence of the complete organization and incorporation of the company purporting thereby to have been established.

(b) Upon filing the certificate of incorporation with the Secretary of State and with the register of deeds in the county where the principal office of the stock-owned association is to be located, the stock-owned savings and loan association shall become a body authorized to begin business when licensed or certified by the Administrator of the Savings and Loan Division as provided in G.S. 54A-10. (1977, c. 543, s. 1.)

**§ 54A-13. Conversion of mutual savings and loan associations to stock-owned.** — (a) Any mutual savings and loan association may convert from mutual to the stock form of ownership as provided in this section. Upon conversion such associations shall be stock-owned associations and shall be governed by the law which governs stock-owned associations.

(b) A mutual savings and loan association that wishes to convert to stock form may apply to the Administrator of the Savings and Loan Division for permission to convert and for certification of appropriate amendments to the association's certificate of incorporation. Upon receipt of an application to convert from mutual to stock form the Administrator shall examine into all facts connected with the requested conversion and, if conversion is duly approved, the Administrator shall monitor and supervise the conversion until completed. The expenses and cost of such examination, monitoring and supervision shall be paid by the association applying for permission to convert.

(c) Upon completion of his examination the Administrator shall report his findings to the Savings and Loan Commission. After hearing the findings of the Administrator and conducting such further examinations and investigations as it deems appropriate, the Commission may approve and permit the requested conversion if it appears that:

- (1) After conversion the association will be in sound financial condition and will be safely and competently managed.
- (2) The conversion will not impair the capital of the association or harm the association's ability to operate safely and properly.
- (3) The conversion will be fair and equitable to the members of the association and no person whether member, employee or otherwise, will receive any inequitable gain or advantage by reason of the conversion.
- (4) The savings and loan services provided to its community and to the public by the association will not be harmed by the conversion.
- (5) The conversion will be conducted as provided by law and pursuant to a plan approved by the Administrator. The substance of the plan must be approved by a vote of two thirds of the board of directors of the association; and, after lawful notice to the members of the association and full and fair disclosure, the substance of said plan must be approved by a majority of the total votes which members of the association are eligible and entitled to cast. Such a vote by the members may be in person or by proxy.
- (6) The plan of conversion provides that:
  - a. All shares of stock issued in connection with the conversion are offered first to the members of the association.
  - b. No person may acquire said stock except a natural person in exchange for fair consideration approved by the Administrator in the form of legal tender of the United States.
  - c. All stock shall be offered to members of the association and others in prescribed amounts and otherwise pursuant to a formula and procedure first found to be fair and equitable by the Administrator and fairly disclosed to all interested persons.
  - d. Members to whom stock will be offered and the amounts of stock which will be offered shall be determined as of a date or dates fixed by the Administrator.
  - e. At the time of the conversion, no person singularly or in combination with his immediate family, may acquire ownership or control of more than five percent (5%) of all the stock issued in connection with the conversion.
  - f. At the time of the conversion, the total amount of stock issued in connection with the conversion and acquired by officers and directors shall not exceed twenty-five percent (25%) of the total number of shares issued in connection with the conversion.
  - g. The Administrator shall not permit a completed conversion until the entire offering of stock in connection with the conversion has been subscribed.

(d) After approval of a requested conversion by the Commission, the Administrator shall supervise and monitor the conversion process and he shall

ensure that the conversion is conducted pursuant to law and the association's approved plan of conversion.

(e) Upon conversion of a mutual savings and loan association to the stock form of ownership, the legal existence of the association shall not terminate but the converted stock-owned association shall be a continuation of the mutual association. The conversion shall be deemed a mere change in identity or form or organization. All rights, liabilities, obligations, interest, and relations of whatever kind of the mutual association shall continue and remain in the stock-owned association. All actions and legal proceedings to which the association was a party prior to conversion shall be unaffected by the conversion and proceed as if the conversion had not taken place.

(f) The Administrator shall promulgate rules and regulations to govern conversions; provided, however, that such rules and regulations as may be promulgated by the Administrator shall be equal to or exceed the requirements for conversion imposed by the rules and regulations governing conversions of federal chartered mutual savings and loan associations of the Federal Home Loan Bank Board as set forth in the Federal Register, Vol. 44, No. 62-Thursday, March 29, 1979, entitled "Part 563b Conversion From Mutual to Stock Form" as these may be amended from time to time and other applicable rules and regulations effective as of the date of ratification. No provision of this section is to be interpreted to require Federal Savings and Loan Insurance Corporation (FSLIC) insurance of accounts as a prerequisite to conversion. All State chartered Savings and Loan Associations are to continue to be allowed to choose between FSLIC and a mutual deposit guaranty association authorized by the statutes of this State for insurance of accounts. Said rules and regulations shall implement the provisions of this section and provide procedures by which an association shall seek permission for a conversion and procedures for conducting conversions. Provided, however, the rules and regulations promulgated under this section shall apply equally to all converting associations and no converting association shall enjoy a competitive advantage over another type of converting association by reason of the rules and regulations governing its conversion; provided further, however, no association shall be required by the Administrator or by regulation to change the type of insurance it maintains on its withdrawable accounts by reason of this section. (1979, c. 798, s. 2.)

**Editor's Note.** — Session Laws 1979, c. 798, ss. 3 and 4 provide:

"Sec. 3. No conversion shall be permitted pursuant to the terms of this act until the rules and regulations referred to herein are promulgated.

"Sec. 4. No association shall be permitted to sell stock pursuant to a plan of conversion under the provisions of this act until such time as stock

has been sold and issued pursuant to an approved plan of conversion by a federally chartered Savings and Loan Association in this State."

Session Laws 1979, c. 798, s. 5, contains a severability clause.

Session Laws 1979, c. 798, s. 6, make this section effective Jan. 1, 1980.

**SS 54A-14 to 54A-17:** Reserved for future codification purposes.

### ARTICLE 3.

#### *Operation of Stock-Owned Associations.*

**§ 54A-18. Rules and regulations.** — The Administrator of the Savings and Loan Division shall promulgate rules and regulations governing the continuing operation of stock-owned savings and loan associations. These rules and regulations shall include requirements that:

- (1) The capital stock and permanent capital reserve of the corporation remain sufficient to continue safe and proper operation of the corporation;
- (2) All initial stockholders, directors, and officers of the corporation are natural persons and residents of North Carolina;
- (3) No stockholder of the corporation owns or controls more than ten percent (10%) of the stock of the corporation;
- (4) The customers of the corporation, and the citizens of North Carolina in general, are protected as fully as possible from poor or improper operation of the corporation. (1977, c. 543, s. 1.)

**§ 54A-19. Profits and permanent capital reserve.** — The Administrator of the Savings and Loan Division shall promulgate rules and regulations governing the manner and amount of dividends which may be paid to stockholders of the corporation, and the methods, if any, by which permanent capital reserve may be retired or reduced. (1977, c. 543, s. 1.)

**§ 54A-20. Penalty for violation.** — Violation by a stockholder, director, officer of a corporation, or by the corporation itself, of any provision of this Chapter or any rules and regulations of the Administrator of the Savings and Loan Division, shall be grounds for revocation of the corporation's license, in the discretion of the Administrator of the Savings and Loan Division. Knowing and intentional violation shall also be a misdemeanor, to be punished as provided by law. (1977, c. 543, s. 1.)

**§§ 54A-21 to 54A-25:** Reserved for future codification purposes.

#### ARTICLE 4.

##### *Deposits.*

**§ 54A-26:** Repealed by Session Laws 1979, c. 96, s. 2.

**§ 54A-27. No maximum on interest paid on deposits.** — Notwithstanding any other provision of the General Statutes, stock-owned savings and loan associations are not limited in the rate of interest they may pay on deposits. Nevertheless, the Administrator of the Savings and Loan Division shall have the authority to insure that no savings and loan association pays a rate of interest on deposits inconsistent with the association's continued solvency, and safe and proper operation. All deposits shall be insured. All savings and loan associations established under this Chapter shall obtain and maintain insurance on all depositors' accounts from any mutual deposit guaranty associations which qualify under Article 7A of Chapter 54 of the General Statutes or from the Federal Savings and Loan Insurance Corporation. (1977, c. 543, s. 1.)

**Editor's Note.** — Session Laws 1979, c. 96, s. 1, amended the title of this Article to read "Deposits."

## Chapter 55.

### Business Corporation Act.

#### Article 3.

##### **Formation, Name and Registered Office.**

Sec.

55-15. Service of process on corporation.

#### Article 4.

##### **Powers and Management.**

55-36. Execution of corporate instruments; authority and proof.

#### Article 5.

##### **Corporate Finance.**

55-45. Sale of shares and options to employees.

55-50. Dividends in cash or property.

#### Article 6.

##### **Shareholders.**

55-57. Share certificates.

#### Article 10.

##### **Foreign Corporations.**

Sec.

55-131. Right to transact business.

55-146. Service on foreign corporations by service on Secretary of State.

#### Article 11.

##### **Fees and Taxes.**

55-155. Fees.

#### Article 12.

##### **Curative Provisions.**

55-160. Certain conveyances of corporations now dissolved validated.

55-164.2. Certain corporate documents acknowledged and recorded before January 1, 1977, validated.

## ARTICLE 3.

### *Formation, Name and Registered Office.*

#### **§ 55-12. Corporate name.**

**Quoted** in State v. Ellis, 33 N.C. App. 667, 236 S.E.2d 299 (1977).

#### **§ 55-13. Registered office and registered agent.**

**Applied** in Royal Bus. Funds Corp. v. South E. Dev. Corp., 32 N.C. App. 362, 232 S.E.2d 215 (1977).

**Cited** in Great Dane Trailers, Inc. v. North Brook Poultry, Inc., 35 N.C. App. 752, 242 S.E.2d 533 (1978).

#### **§ 55-15. Service of process on corporation.**

(b) Whenever a corporation shall fail to appoint or maintain a registered agent in this State, or whenever its registered agent cannot with due diligence be found at the registered office, then the Secretary of State shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the Secretary of State of any such process, notice, or demand shall be made by delivering to and leaving with him, or with any clerk having charge of the corporation department of his office, duplicate copies of such process, notice or demand. In the event any such process, notice or demand is served on the Secretary of State, he shall immediately cause one of the copies thereof to be forwarded by registered or certified mail, addressed to the corporation at its registered office. Any such corporation so served shall be in court for all purposes from and after the date of such service on the Secretary of State. (1977, 2nd Sess., c. 1219, s. 33.)

**Editor's Note.** — The 1977, 2nd Sess., amendment, effective July 1, 1978, inserted "or certified" in the third sentence of subsection (b).

Session Laws 1977, 2nd Sess., c. 1219, s. 57, contains a severability clause.

As the rest of the section was not changed by the amendment, only subsection (b) is set out.

**Service upon a corporation by substituted service upon the Secretary of State does not violate due process of law.** Royal Bus. Funds Corp. v. South E. Dev. Corp., 32 N.C. App. 362, 232 S.E.2d 215, cert. denied, 292 N.C. 728, 235 S.E.2d 784 (1977).

**The test is not whether defendants received actual notice** but whether the notice was of a nature reasonably calculated to give them actual notice and the opportunity to defend. Royal Bus. Funds Corp. v. South E. Dev. Corp., 32 N.C. App. 362, 232 S.E.2d 215, cert. denied, 292 N.C. 728, 235 S.E.2d 784 (1977).

Subsection (b), which directs the Secretary of State to forward the process by registered mail, does not require that the defendant corporation receive actual notice. Royal Bus. Funds Corp. v.

South E. Dev. Corp., 32 N.C. App. 362, 232 S.E.2d 215, cert. denied, 292 N.C. 728, 235 S.E.2d 784 (1977).

**Effect of Failure to Comply with Statutory Registration Requirements.** — Where defendants were required by § 55-13 to maintain a registered office and registered agent, their failure to do so caused the process to be twice returned without personal service and had they conformed to the statutory requirements, both methods of service would have resulted in their receiving actual notice of the lawsuit, the notice given (attempted personal service on the Secretary of State) was in fact reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. Accordingly, the service upon the Secretary of State was constitutionally valid and the trial court acquired in personam jurisdiction over the North Carolina corporations. Royal Bus. Funds Corp. v. South E. Dev. Corp., 32 N.C. App. 362, 232 S.E.2d 215, cert. denied, 292 N.C. 728, 235 S.E.2d 784 (1977).

## § 55-16. Bylaws.

**Statutory Norms Control Amendments Where Bylaws Fail to Control.** — In the absence of a valid provision in the charter or bylaws controlling amendment, statutory or common-law norms governing amendment apply. Blount v. Taft, 295 N.C. 472, 246 S.E.2d 763 (1978).

**If a shareholders' agreement is made a part of the charter or bylaws it will be subject to amendment as provided therein or, in the absence of an internal provision governing amendments, as provided by the statutory**

norms. Blount v. Taft, 295 N.C. 472, 246 S.E.2d 763 (1978).

When parties to a shareholders' agreement choose to embody it in the charter or bylaws, it must be concluded that they intended for statutory or common-law norms governing amendment to apply absent an expressed intention to deviate from them. Blount v. Taft, 295 N.C. 472, 246 S.E.2d 763 (1978).

**Applied** in Blount v. Taft, 29 N.C. App. 626, 225 S.E.2d 583 (1976).

## ARTICLE 4.

### *Powers and Management.*

## § 55-17. General powers.

### I. IN GENERAL.

**Ratification of and Liability for Pre-Incorporation Contract.** — Although a corporation may not technically ratify a contract made on its behalf prior to its incorporation, since it could not at that time have authorized

such action on its behalf, it may, after it comes into existence, adopt such contract by its corporate action, which adoption may be express or implied, and thereby become liable for its performance. Smith v. Ford Motor Co., 289 N.C. 71, 221 S.E.2d 282 (1976).

## § 55-19. Indemnification of directors, officers, employees or agents; general provisions.

**Editor's Note.** —

For a survey of 1977 law on business associations, see 56 N.C.L. Rev. 939 (1977).

**Legal Fees May Be Advanced for Defense of Derivative Action.** — In a derivative action brought by shareholders against directors of a corporation alleging malfeasance in office, § 55-30 did not operate to prevent subsection (d) of this section from being effective in allowing the corporation to advance any legal fees to the directors, since the advancement of legal fees under that subsection is not necessarily a transaction in which a director is adversely interested, and since, even if it were, the

disinterested directors of the corporation had approved the advancement. *Swenson v. Thibaut*, 39 N.C. App. 77, 250 S.E.2d 279 (1978).

**"Undertaking" Defined.** — The "undertaking" required by subsection (d) of this section for the repayment of fees advanced if the director is unsuccessful is just that: a written promise, not made under seal, given as security for the performance of some act as required in a legal proceeding. *Swenson v. Thibaut*, 39 N.C. App. 77, 250 S.E.2d 279 (1978).

#### § 55-24. Board of directors.

Cited in *Blount v. Taft*, 295 N.C. 472, 246 S.E.2d 763 (1978).

#### § 55-28. Directors' meetings.

Applied in *Blount v. Taft*, 29 N.C. App. 626, 225 S.E.2d 583 (1976).

#### § 55-30. Director's adverse interest.

**Editor's Note.** — For comment on areas of dispute in condominium law, see 12 Wake Forest L. Rev. 979 (1976).

**Derivative Action against Director Does Not Necessarily Make Him "Adversely Interested."**

— In a derivative action brought by shareholders against directors of a corporation alleging malfeasance in office, this section did not operate to prevent § 55-19(d) from being

Cited in *Blount v. Taft*, 295 N.C. 472, 246 S.E.2d 763 (1978).

effective in allowing the corporation to advance any legal fees to the directors, since the advancement of legal fees under § 55-19(d) is not necessarily a transaction in which a director is adversely interested, and since, even if it were, the disinterested directors of the corporation had approved the advancement. *Swenson v. Thibaut*, 39 N.C. App. 77, 250 S.E.2d 279 (1978).

#### § 55-31. Executive and other committees.

Cited in *Blount v. Taft*, 295 N.C. 472, 246 S.E.2d 763 (1978).

#### § 55-32. Liability of directors in certain cases.

Cited in *Blount v. Taft*, 295 N.C. 472, 246 S.E.2d 763 (1978).

#### § 55-33. Jurisdiction over and service on nonresident director.

**Due Process Requirements.** — For an analysis of the due process requirements for jurisdiction over nonresident directors of domestic corporations in shareholders' derivative actions, see *Swenson v. Thibaut*, 39 N.C. App. 77, 250 S.E.2d 279 (1978).

**Legislative Interest Expressed.** — The legislature, by way of § 1-75.4(8) and this

section, has expressed a substantial interest in bringing nonresident directors of corporations before the North Carolina courts, and has given to the courts the fullest jurisdiction allowable under the Constitution. *Swenson v. Thibaut*, 39 N.C. App. 77, 250 S.E.2d 279 (1978).

**Consideration of Validity of Section Unnecessary.** — Where sufficient contacts

existed between North Carolina and a nonresident director of a North Carolina corporation at the time of the events complained of in a shareholders' derivative action alleging malfeasance in office by the director to subject

him constitutionally to the jurisdiction of the North Carolina courts, it was not necessary that the Court of Appeals consider the validity of this section per se. Swenson v. Thibaut, 39 N.C. App. 77, 250 S.E.2d 279 (1978).

### **§ 55-35. Duty of directors and officers to corporation.**

#### **Editor's Note. —**

For comment on areas of dispute in condominium law, see 12 Wake Forest L. Rev. 979 (1976).

**Director in Fiduciary Relationship to Shareholder.** — Under special circumstances, a director of a corporation stands in a fiduciary

relationship to a shareholder or director in the acquisition of the shareholder's stock. Lazenby v. Godwin, 40 N.C. App. 487, 253 S.E.2d 489 (1979).

Cited in Smith v. Ford Motor Co., 289 N.C. 71, 221 S.E.2d 282 (1976).

**§ 55-36. Execution of corporate instruments; authority and proof. —** (a) Notwithstanding anything to the contrary in the bylaws or charter, any deed, mortgage, contract, note, evidence of indebtedness, proxy, or other instrument in writing, or any assignment or indorsement thereof, whether heretofore or hereafter executed, when signed in the ordinary course of business on behalf of a corporation by its president, a vice-president or an assistant vice-president and attested or countersigned by its secretary or an assistant secretary, (or, in the case of a bank, attested or countersigned by its secretary, assistant secretary, cashier, or assistant cashier), not acting in dual capacity, shall with respect to the rights of innocent third parties, be as valid as if executed pursuant to authorization from the board of directors, unless the instrument reveals on its face a potential breach of fiduciary obligation. The foregoing shall not apply to parties who had actual knowledge of lack of authority or of a breach of fiduciary obligation or to the execution of corporate securities which are required, by corporate regulations or resolutions formally adopted, to be signed or countersigned by a transfer agent or registrar who has agreed to act in that capacity.

(b) Any instrument purporting to create a security interest in personal property of a corporation, is sufficiently executed on behalf of the corporation if heretofore or hereafter signed in his official capacity by the president, a vice-president, an assistant vice-president, the secretary, an assistant secretary, the treasurer, or an assistant treasurer. Any instrument so executed shall, with respect to the rights of innocent holders, be as valid as if authorized by the board of directors and upon acknowledgment may be ordered to registration as provided by law.

(1979, c. 359, ss. 1, 2.)

**Editor's Note. —** The 1979 amendment deleted "or" after "president" and inserted "or an assistant vice-president" near the middle of the first sentence of subsection (a) and inserted "an assistant vice-president" near the end of the first sentence of subsection (b).

As only subsections (a) and (b) were changed by the amendment, the rest of the section is not set out.

The typed name of the corporation on the financing statement was insufficient under subsection (b). Little v. County of Orange, 31 N.C. App. 495, 229 S.E.2d 823 (1976).

### § 55-37. Books and records.

**Right to information is unqualified.** — This section contains no qualifying language. The language is absolute: the corporation "shall" mail or otherwise deliver the documents to "any" shareholder upon his written request therefor. The legislature has decided that the information referred to in this section is so basic and fundamental that any shareholder is entitled to a copy of it merely by writing for it. The motive of the requesting shareholder is irrelevant. *Morgan v. McLeod*, 40 N.C. App. 467, 253 S.E.2d 339 (1979).

#### § 55-37.1. Form of records.

**Editor's Note.** — For survey of 1973 case law on the admissibility of computer print-outs, see 52 N.C.L. Rev. 903 (1974).

**Conditions under Which, etc.** —

In accord with original. See *State v. Stapleton*,

The qualifying language of § 55-38, i.e., that the requested information be for a "proper purpose," is not applicable to this section. *Morgan v. McLeod*, 40 N.C. App. 467, 253 S.E.2d 339 (1979).

This section grants certain absolute rights to shareholders; § 55-38 grants certain qualified rights to shareholders. *Morgan v. McLeod*, 40 N.C. App. 467, 253 S.E.2d 339 (1979).

29 N.C. App. 363, 224 S.E.2d 204, appeal dismissed, 290 N.C. 554, 226 S.E.2d 513 (1976).

### § 55-38. Examination and production of books, records and information.

**Right of Inspection Is Qualified Right.** — Section 55-37 grants certain absolute rights to shareholders; this section grants certain qualified rights to shareholders. *Morgan v. McLeod*, 40 N.C. App. 467, 253 S.E.2d 339 (1979).

**Construction with Other Sections.** — The "proper purpose" qualification is clearly limited to the information contemplated by this section. *Morgan v. McLeod*, 40 N.C. App. 467, 253 S.E.2d 339 (1979).

The qualifying language of this section, i.e., that the requested information be for a "proper purpose," is not applicable to § 55-37. *Morgan v. McLeod*, 40 N.C. App. 467, 253 S.E.2d 339 (1979).

**"Proper" Motive Required for Actual Visit.** — Under subsection (b) of this section the requesting shareholders must have a "proper purpose" in wanting the information. For a shareholder to have the right to actually visit a

corporation's office and possibly disrupt its normal operation by inspecting voluminous books and records of account, the legislature has correctly decided that his motives must be "proper." *Morgan v. McLeod*, 40 N.C. App. 467, 253 S.E.2d 339 (1979).

**Determination of Value.** — This section is silent as to a method of determining value under subsection (d) of this section. *Morgan v. McLeod*, 40 N.C. App. 467, 253 S.E.2d 339 (1979).

In determining value under subsection (d) of this section the trial court must consider all material factors and elements which counsel bring to the court and not depend upon any one particular formula exclusively. The weight accorded a theory or factor will vary with the circumstances. *Morgan v. McLeod*, 40 N.C. App. 467, 253 S.E.2d 339 (1979).

## ARTICLE 5.

### Corporate Finance.

**§ 55-45. Sale of shares and options to employees.** — (a) Unless otherwise provided in the charter, a corporation may provide for and carry out a plan for the sale of its unissued or treasury shares to its employees or to the employees of its subsidiary corporations or to a trustee on their behalf. Such plan shall be adopted at a special or annual meeting by vote of a majority of the shares entitled to vote. Such plan may include provisions, among others, for: the kind and amount of consideration, payment in installments or at one time; aiding any such employees in paying for such shares by compensation for services, by loans, or otherwise; granting of options, which may, if so provided by the plan, be nontransferable otherwise than by will or the laws of descent and distribution; the fixing of eligibility for participation in the plan; the class and price of shares

to be sold under the plan; the number of shares which may be purchased, the method of payment therefor, the reservation of title until full payment; the effect of termination of employment; an option or obligation on the part of the corporation to repurchase the shares; and the time limits and termination of the plan. The term "employees" as used in this section includes officers in the full-time employment of the corporation, but nothing in this section is intended to permit financial aid to such officers in violation of G.S. 55-22.

(1975, c. 303.)

**Editor's Note. —**

The 1975 amendment substituted "which may, if so provided by the plan, be nontransferable otherwise than by will or the laws of descent and distribution" for "which shall be nontransferable except by operation of law" near the middle of the third sentence of subsection (a).

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

**Amendment Effective April 1, 1980.** — Session Laws 1979, c. 508, s. 1, effective April 1, 1980, will amend this section to read:

**"§ 55-45. Sale of shares and options to employees. —** (a) Subject to the provisions contained in this Chapter or in its charter or bylaws, a corporation may provide for and carry out a plan for the sale or other disposition of its unissued or treasury shares, including but not limited to the issuance of rights or options to acquire such shares, to its employees or to the employees of its subsidiary corporations or to a trustee on their behalf. Such plan may include provisions, among others, for the kind and amount of consideration, payment in installments or at one time; aiding any such employees in paying for such shares by compensation for services, by loans, or otherwise; limiting the transferability of such shares, rights or options; the fixing of eligibility for participation in the plan; the class and price

of shares to be sold under the plan; the number of shares which may be purchased, the method of payment therefor, the reservation of title until full payment; the effect of termination of employment; an option or obligation on the part of the corporation to repurchase the shares; and the time limits and termination of the plan; provided, however, that if the corporation providing for any such plan has fewer than 10 shareholders, such plan shall be approved by a majority of the outstanding shares of such corporation unless the charter of the corporation provides that such approval is not required. The term "employees," as used in this section, includes officers in the full-time employment of the corporation, but nothing in this section is intended to permit financial aid to such officers in violation of G.S. 55-22.

(b) In any actions by, against or in behalf of a corporation to challenge the validity of any stock option granted to any employee, the situs of the option is deemed to be at the registered office of the corporation, and such action may be brought as an action quasi in rem with service of process by publication or outside the State as provided by law. Such action may also be brought as an action in personam. If two or more grantees of stock options are necessary or proper parties, they may be joined in accordance with the provisions of law applicable to class actions."

**§ 55-50. Dividends in cash or property.**

(m) Upon receipt of a demand from the holders of twenty percent (20%) or more of the shares of any class of shares pursuant to subsection (l) of this section, the corporation receiving such demand may, during the then fiscal period or within three months after the close thereof, give written notice to each shareholder making such written demand that the corporation elects to redeem all shares held by such shareholder in lieu of the payment of dividends as provided in subsection (l) of this section and shall pay to such shareholder the fair value of his shares as of the day preceding the mailing or otherwise reasonably dispatching of the notice. A shareholder receiving such notice shall thereafter be entitled to withdraw his dividend demand by giving written notice of such withdrawal to the corporation within 10 days after receipt of the redemption notice of the corporation or, if no such withdrawal is made, to receive the fair value of his shares, subject only to the surrender by him of the certificate or certificates representing his shares and to the provisions of G.S. 55-52, which value shall be determined and paid as follows:

(1) If within 30 days after the date upon which a shareholder becomes entitled to payment for his shares under this subsection, the value of

the shares is agreed upon between the shareholder and the corporation, payment therefor shall be made within 60 days after the agreement, upon surrender of the certificate representing the shares, whereupon the shareholder shall cease to have any interest in such shares or in the corporation.

- (2) If within the such 30-day period the shareholder and the corporation do not agree as to the value of the shares, the shareholder may, within 60 days after the expiration of the 30-day period, file a petition in the superior court of the county of the registered office of the corporation asking for the appointment by the clerk of three qualified and disinterested appraisers to appraise the fair value of the shares. A summons as in other cases of special proceedings, together with a copy of the petition, shall be served on the corporation at least 10 days prior to the hearing of the petition by the court. The award of appraisers, or a majority of them, if no exceptions be filed thereto within 10 days after the award shall have been filed in court, shall be confirmed by the court, and when confirmed shall be final and conclusive, and the shareholder upon depositing the proper share certificates in court, shall be entitled to judgment against the corporation for the appraised value thereof as of the date prescribed in this section, together with interest thereon to the date of such confirmation. If either party files exceptions to such award within 10 days after the award shall have been filed in court, the case shall be transferred to the civil issue docket of the superior court for trial during term and shall be there tried in the same manner, as near as may be practicable, as is provided in Chapter 40 for the trial of cases under the eminent domain law of this State, and with the same right of appeal as is permitted in said Chapter. The court shall assess the cost of said proceedings as it shall deem equitable. Upon payment of the judgment the shareholder shall cease to have any interest in the shares or in the corporation and the corporation shall be entitled to have said share certificates surrendered to it by the clerk of court for cancellation. Unless the shareholder shall file such petition within the time herein prescribed, he and all persons claiming under him shall have no right of payment hereunder but in that event nothing herein shall impair his status as shareholder.

Shares acquired by a corporation pursuant to payment of the agreed value thereof or to payment of the judgment entered therefor, as in this subsection provided, may be held and disposed of by the corporation as in the case of other treasury shares. (Code, s. 681; 1901, c. 2, ss. 33, 52; Rev., ss. 1191, 1192; C. S., ss. 1178, 1179; 1927, c. 121; 1933, c. 354, s. 1; G. S., ss. 55-115, 55-116; 1955, c. 1371, s. 1; 1959, c. 1316, s. 16; 1965, c. 726; 1969, c. 751, ss. 22, 45; 1973, c. 469, ss. 18-20; c. 683; c. 1087, ss. 3-5; 1975, c. 19, s. 17; c. 304.)

**Editor's Note. —**

The first 1975 amendment corrected an error in the first 1973 amendatory act by substituting "give" for "given" preceding "written notice" near the middle of the first sentence of subsection (m).

The second 1975 amendment inserted the language beginning "to withdraw his dividend"

and ending "withdrawal is made" and substituted "the certificate or certificates" for "his certificate" in the second sentence of subsection (m).

As the rest of the section was not changed by the amendments, only subsection (m) is set out.

## ARTICLE 6.

*Shareholders.***§ 55-55. Shareholders' derivative actions.**

**Role of Corporation as Party.** — In an action, brought by a minority shareholder derivatively in the name and right of a corporation, to enforce rights or to seek redress accruing to the corporation, that corporation will be deemed for purposes of the litigation to be aligned as a party plaintiff (except to the extent that the corporation is an actual defendant as to an issue in the action) although for purposes of form it is designated as a nominal defendant. Accordingly, the corporation may not defend itself against the derivative action on the merits and must limit its defenses, if any, to the pre-trial matters proper to it. Where a corporation seeks to extend its defenses beyond those areas in which it may properly conduct them, dismissal will lie against it. *Swenson v. Thibaut*, 39 N.C. App. 77, 250 S.E.2d 279 (1978).

In some situations, the corporation in whose interest the derivative action is purportedly brought will have interests adverse to those of the nominal plaintiffs bringing the action derivatively, and will of necessity be more than a nominal defendant. Such situations would include an action to enjoin the performance of a contract by the corporation, to appoint a receiver, to interfere with a corporate reorganization or to interfere with internal management where there is no allegation of fraud or bad faith. *Swenson v. Thibaut*, 39 N.C. App. 77, 250 S.E.2d 279 (1978).

**When Demand upon Directors to Sue Required.** — Subsection (b) of this section codifies the prior case law of this and other jurisdictions where it has been held that in order for an individual as a shareholder to bring suit against the directors of a corporation for breaches of their duties to the corporation, he must show that he has exhausted his intra-corporate remedies by making demand upon the board to do that which he seeks to have done. *Swenson v. Thibaut*, 39 N.C. App. 77, 250 S.E.2d 279 (1978).

**When Demand upon Directors to Sue Not Required.** — One equitable exception to the general rule embodied by subsection (b) of this section has consistently been maintained by the courts: where the directors who are in control of the corporation are the same ones (or under the control of the same ones) as were initially responsible for the breaches of duty complained of, the demand of a shareholder upon directors to sue themselves or their principals would be futile, and as such is not required as a prerequisite for the maintenance of the action.

*Swenson v. Thibaut*, 39 N.C. App. 77, 250 S.E.2d 279 (1978).

**Business Judgment Rule Stated.** — The business judgment rule, stated simply, provides that when a corporation's decision not to assert a claim represents a good faith business judgment by its directors, a shareholder will not be permitted to substitute his judgment for that of the company's management by asserting the claim in a derivative action. *Swenson v. Thibaut*, 39 N.C. App. 77, 250 S.E.2d 279 (1978).

**Business Judgment Defense Involves Sole Question of Good Faith.** — Where the business judgment question is presented to a court as a ground for dismissal, the sole issue for determination is whether the decision was made in good faith. *Swenson v. Thibaut*, 39 N.C. App. 77, 250 S.E.2d 279 (1978).

**Defense of "Business Judgment" by Corporation.** — The defense of business judgment is not available to the corporation in a derivative action where a majority of its directors are implicated in the allegations of the suit, as it is a defense on the merits which may properly be interposed only by the directors and management of the corporation, unless the corporation is a real defendant as to some meritorious issue in the suit. *Swenson v. Thibaut*, 39 N.C. App. 77, 250 S.E.2d 279 (1978).

**The pleading of the damages is an issue which is central to the merits of a derivative action** and was not an area in which the corporation had standing to assert a defense. *Swenson v. Thibaut*, 39 N.C. App. 77, 250 S.E.2d 279 (1978).

**A corporation is not powerless in all cases and in all circumstances to resist a derivative action.** *Swenson v. Thibaut*, 39 N.C. App. 77, 250 S.E.2d 279 (1978).

**Defenses Not on Merits Available to Corporation.** — Other defenses, such as matters of personal jurisdiction, venue and subject matter jurisdiction (which question may arise in the context of alleged existence of prior pending actions involving matters identical to those complained of in the derivative suit) could be asserted by both corporations and individual defendants where appropriate, as they are not defenses on the merits of the derivative claim. *Swenson v. Thibaut*, 39 N.C. App. 77, 250 S.E.2d 279 (1978).

**Additionally, certain defenses which are properly asserted before trial on the merits of the derivative action are peculiar to the corporation alone, and may be properly raised**

only by the corporate nominal defendant who, for purposes of those matters, ceases to be a nominal defendant and becomes an actual party defendant. These defenses would include the lack of standing of the plaintiffs to sue

derivatively for reasons of insufficient representation of shareholders and a failure on plaintiffs' part to make a demand upon the board of directors. *Swenson v. Thibaut*, 39 N.C. App. 77, 250 S.E.2d 279 (1978).

### **§ 55-56. Preemptive rights.**

**Amendment Effective April 1, 1980.** — Session Laws 1979, c. 508, s. 2, effective April 1, 1980, will amend subdivision (4) of subsection (c) to read:

"(4) Shares sold or agreed to be sold to employees or rights or options for shares granted to employees as

provided in G.S. 55-45, provided a plan for such sales or options is approved by the affirmative vote of a majority of the outstanding shares entitled to vote, or"

**Cited** in *Blount v. Taft*, 295 N.C. 472, 246 S.E.2d 763 (1978).

### **§ 55-57. Share certificates.**

(b) Every shareholder of a corporation shall be entitled to a certificate or certificates for the fully paid shares owned by him. Each certificate shall be signed by the president or a vice-president of the corporation or a person who has been designated as the chief executive officer of the corporation, and by its treasurer, assistant treasurer, secretary or an assistant secretary, or its cashier or an assistant cashier in case of a bank, and may be sealed with the seal of the corporation or a facsimile thereof. The signatures of any such officers upon a certificate may be facsimiles or may be engraved or printed or omitted if the certificate is countersigned by a transfer agent, or registered by a registrar, other than the corporation itself or an employee of the corporation. In case any officer who has signed or whose facsimile or other signature has been placed upon such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer at the date of its issue.

(1979, c. 91.)

**Editor's Note.** — The 1979 amendment inserted "or a person who has been designated as the chief executive officer of the corporation" near the middle of the first sentence of subsection (b).

As only subsection (b) was changed by the amendment, the rest of the section has not been set out.

**Cited** in *State ex rel. Utilities Comm'n v. United Tank Lines*, 34 N.C. App. 543, 239 S.E.2d 266 (1977).

### **§ 55-59. Recognition of acts of record owners of shares or other securities.**

**Cited** in *Blount v. Taft*, 29 N.C. App. 626, 225 S.E.2d 583 (1976).

### **§ 55-61. Meetings of shareholders.**

Stated in *Swenson v. All Am. Assurance Co.*, 33 N.C. App. 458, 235 S.E.2d 793 (1977).

### **§ 55-65. Quorum of shareholders.**

**Cited** in *Blount v. Taft*, 295 N.C. 472, 246 S.E.2d 763 (1978).

### § 55-66. Votes required.

**Applied** in Blount v. Taft, 29 N.C. App. 626, 225 S.E.2d 583 (1976).

**Cited** in Blount v. Taft, 295 N.C. 472, 246 S.E.2d 763 (1978).

### § 55-71. Proceeding to determine validity of election or appointment of directors or officers.

**Purpose of Section.** — This section in its entirety is directed at determining rights and duties resulting from an election held which is contested as to its validity. Swenson v. All Am. Assurance Co., 33 N.C. App. 458, 235 S.E.2d 793 (1977).

**The statute is remedial, etc. —**

In accord with original. See Swenson v. All Am. Assurance Co., 33 N.C. App. 458, 235 S.E.2d 793 (1977).

**The corporation shall continue to function, etc. —**

This section provides a method of leaving a corporation in status quo so the corporate

business can be continued while the validity of an election already held is determined. Swenson v. All Am. Assurance Co., 33 N.C. App. 458, 235 S.E.2d 793 (1977).

**Section Does Not Apply to Prospective Election Meetings.** — The wording of this section clearly indicates that it applies only to contested elections after the fact and not to prospective meetings for the holding of election. Swenson v. All Am. Assurance Co., 33 N.C. App. 458, 235 S.E.2d 793 (1977).

### § 55-72. Voting trust.

**Cited** in Blount v. Taft, 295 N.C. 472, 246 S.E.2d 763 (1978).

### § 55-73. Shareholders' agreements.

**Editor's Note. —**

For survey of 1976 case law on commercial law, see 55 N.C.L. Rev. 943 (1977).

**In General.** — With respect to close corporations, the heart of the North Carolina Business Corporation Act is this section. Blount v. Taft, 295 N.C. 472, 246 S.E.2d 763 (1978).

**Intent of Section.** — This section was not intended to, and it does not, define "shareholders' agreements" to mean only those arrangements which are an attempt to treat the corporation as if it were a partnership or which arrange relationships in a manner that would be appropriate only between partners. Blount v. Taft, 295 N.C. 472, 246 S.E.2d 763 (1978).

The authorization of the shareholders' agreements was a recognition of the needs of stockholders in a close corporation to be able to protect themselves from each other and from hostile invaders. Blount v. Taft, 295 N.C. 472, 246 S.E.2d 763 (1978).

The reason for phrasing the provisions of this section mainly in the negative was to provide latitude to both the shareholders who enter into agreements which relate to the affairs of the

corporation and to the courts which must construe and assess their contracts. Blount v. Taft, 295 N.C. 472, 246 S.E.2d 763 (1978).

**Shareholders' Agreement Defined.** — A shareholders' agreement is a contract between shareholders which may apply broadly to the rights of the shareholders in conducting the business of the corporation, so long as their purposes are legal and not contrary to public policy. Blount v. Taft, 29 N.C. App. 626, 225 S.E.2d 583 (1976), rev'd on other grounds, 295 N.C. 472, 246 S.E.2d 763 (1978).

In a broad sense the term "shareholders' agreement" refers to any agreement among two or more shareholders regarding their conduct in relation to the corporation whose shares they own. Blount v. Taft, 295 N.C. 472, 246 S.E.2d 763 (1978).

**No particular title, phrasing or content is necessary** for a consensual arrangement among all shareholders to constitute a "shareholders' agreement." Blount v. Taft, 295 N.C. 472, 246 S.E.2d 763 (1978).

**Form and Substance May Vary.** — The form and substance of a shareholders' agreement will

vary with the nature of the business and the objectives of the parties. Blount v. Taft, 295 N.C. 472, 246 S.E.2d 763 (1978).

**Function of Shareholders' Agreement.** — Ordinarily the function of a shareholders' agreement is to avoid the consequences of majority rule or other statutory norms imposed by the corporate form. Blount v. Taft, 295 N.C. 472, 246 S.E.2d 763 (1978).

**Who May Be Party to an Agreement.** — A shareholders' agreement may be between stockholders in a corporation the shares of which are publicly traded or one whose shares are closely held. However, agreements among shareholders are primarily a feature of close corporations. Blount v. Taft, 295 N.C. 472, 246 S.E.2d 763 (1978).

**How Altered or Terminated.** — A shareholders' agreement may not be altered or terminated except as provided by the agreement, or by all the parties, or by operation of law. Blount v. Taft, 29 N.C. App. 626, 225 S.E.2d 583 (1976), rev'd on other grounds, 295 N.C. 472, 246 S.E.2d 763 (1978).

**Amendment of Agreement in Bylaws.** — When parties to a shareholders' agreement choose to embody it in the charter or bylaws, it must be concluded that they intended for statutory or common-law norms governing amendment to apply absent an expressed intention to deviate from them. Blount v. Taft, 295 N.C. 472, 246 S.E.2d 763 (1978).

If a shareholders' agreement is made a part of the charter or bylaws it will be subject to amendment as provided therein or, in the absence of an internal provision governing amendments, as provided by the statutory norms. Blount v. Taft, 295 N.C. 472, 246 S.E.2d 763 (1978).

The terms "bylaw" and "shareholders' agreement" are not mutually exclusive. Bylaws which are unanimously enacted by all the shareholders of a corporation are also shareholders' agreements. Blount v. Taft, 295 N.C. 472, 246 S.E.2d 763 (1978).

**Consensual agreements coming within subsection (b) are shareholders' agreements** whether they are embodied in the bylaws or in a duly executed side agreement. Blount v. Taft, 295 N.C. 472, 246 S.E.2d 763 (1978).

**Partnership-like Management Enabled.** — This section enables the shareholders of a close corporation by agreement in writing assented to by all to provide for the management and operation of the corporation in a manner similar to a partnership. Blount v. Taft, 29 N.C. App. 626, 225 S.E.2d 583 (1976), rev'd on other grounds, 295 N.C. 472, 246 S.E.2d 763 (1978).

By means of a shareholders' agreement a small group of investors who seek gain from direct participation in their business and not from trading its stock or securities in the open market can adopt the decision-making

procedures of partnership, avoid the consequences of majority rule (the standard operating procedure for corporations), and still enjoy the tax advantages and limited liability of a corporation. Such businesses are often called "incorporated partnerships." Blount v. Taft, 295 N.C. 472, 246 S.E.2d 763 (1978).

Subsection (b) creates no distinctions between a shareholders' agreement in which the parties seek to deal with the corporation as a partnership and any other stockholders' agreement which relates to any phase of the affairs of the corporation. It adds nothing, either expressly or impliedly, to the words of the agreement; nor does it suspend the rules of contract law relating to its construction, modification or rescission. It merely provides that a shareholders' agreement in which the parties seek to deal with affairs of the corporation in a manner which would be appropriate only between partners is not invalid for that reason. Blount v. Taft, 295 N.C. 472, 246 S.E.2d 763 (1978).

**Intent of Subsection (b).** — Subsection (b) was intended to supply a legal framework within which partner-like arrangements having a reasonable business purpose could be worked out with substantial assurance of legal validity. Blount v. Taft, 29 N.C. App. 626, 225 S.E.2d 583 (1976), rev'd on other grounds, 295 N.C. 472, 246 S.E.2d 763 (1978).

Subsection (b), like the other two subsections, simply abrogates, as to agreements within its purview, certain judicial doctrines which had formerly invalidated particular shareholders' agreements on those grounds which the statute now disallows. Blount v. Taft, 295 N.C. 472, 246 S.E.2d 763 (1978).

The language in subsection (b) has been widely borrowed for the close corporations statutes of several other jurisdictions. Blount v. Taft, 295 N.C. 472, 246 S.E.2d 763 (1978).

To meet the requirements of subsection (b) for establishing a valid shareholders' agreement in a close corporation, there must be an agreement in writing of all shareholders; but the writing may consist of a written provision in the charter or bylaws of the corporation which may be based on an oral agreement which has been embodied therein. Blount v. Taft, 29 N.C. App. 626, 225 S.E.2d 583 (1976), rev'd on other grounds, 295 N.C. 472, 246 S.E.2d 763 (1978).

**Meeting the Burden of Proof.** — Those who have the burden of proving a valid shareholders' agreement could ease this burden by offering an agreement in writing signed by all shareholders, or if embodied in the charter or bylaws, explicit designation therein of a shareholders' agreement and provision for alteration of the agreement if different from the alteration or amendment provisions applicable to the charter or bylaw provisions which are not within the agreement. Blount v. Taft, 29 N.C. App. 626, 225

S.E.2d 583 (1976), rev'd on other grounds, 295 N.C. 472, 246 S.E.2d 763 (1978).

**When Such Agreements Held Invalid.** — A shareholders' agreement is not valid and enforceable merely because it fits the specifications of this section. It can be invalidated under the law of contracts upon any ground which would entitle a party to such relief. *Blount v. Taft*, 295 N.C. 472, 246 S.E.2d 763 (1978).

Since concensual arrangements among shareholders are agreements — the products of

negotiation — they should be construed and enforced like any other contract so as to give effect to the intent of the parties as expressed in their agreements, unless they violate the express charter or statutory provision, contemplate an illegal object, involve fraud, oppression or wrong against other shareholders, or are made in consideration of a private benefit to the promisor. *Blount v. Taft*, 295 N.C. 472, 246 S.E.2d 763 (1978).

## ARTICLE 8.

### *Fundamental Changes.*

#### **§ 55-101. Class voting and objecting shareholders' rights on amendments.**

Stated in *Jackson v. Stanwood Corp.*, 38 N.C. App. 479, 248 S.E.2d 576 (1978).

#### **§ 55-113. Rights of objecting shareholders upon fundamental changes and certain exchanges of shares.**

Applied in *Jackson v. Stanwood Corp.*, 38 N.C. App. 479, 248 S.E.2d 576 (1978).

## ARTICLE 9.

### *Dissolution and Liquidation.*

#### **§ 55-125. Power of courts to liquidate and decree involuntary dissolution.**

**Editor's Note.** — For comment discussing alternative remedies to dissolution for the deadlocked corporation, see 51 N.C.L. Rev. 815 (1973).

**Power of Court Absent Statute.** — As a general rule, the court would have no power, absent statutory direction, to order the dissolution of a corporation simply on the grounds that there was a deadlock or dissension among the directors or stockholders. *Ellis v. Civic Imp., Inc.*, 24 N.C. App. 42, 209 S.E.2d 873 (1974), cert. denied, 286 N.C. 413, 211 S.E.2d 794 (1975).

**Finding Required under Subdivision (a)(1).** — Under subdivision (a)(1), irreconcilable deadlock of the directorate or shareholders is not sufficient basis for an order of liquidation without a supported finding or conclusion that the shareholders are so deadlocked that its business can no longer be conducted with advantage to all the shareholders. *Ellis v. Civic Imp., Inc.*, 24 N.C. App. 42, 209 S.E.2d 873 (1974), cert. denied, 286 N.C. 413, 211 S.E.2d 794 (1975).

#### **§ 55-125.1. Discretion of court to grant relief other than dissolution.**

**Editor's Note.** — For comment discussing alternative remedies to dissolution for the deadlocked corporation, see 51 N.C.L. Rev. 815 (1973).

deadlocked corporation, see 51 N.C.L. Rev. 815 (1973).

## ARTICLE 10.

*Foreign Corporations.*

**§ 55-131. Right to transact business.** — (a) A foreign corporation shall procure a certificate of authority from the Secretary of State before it shall transact business in this State. No foreign corporation shall be entitled to procure a certificate of authority under this Chapter to transact in this State any business which a corporation organized under this Chapter is not permitted to transact. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ from the laws of this State.

**Editor's Note.** —

Subsection (a) of this section is set out in order to correct a typographical error in the third sentence of the subsection as it appears in the Replacement Volume.

As the rest of the section was not affected, only subsection (a) is set out.

**§ 55-132. Powers of foreign corporation.**

**Securities Issued by Foreign Corporation.** — The mere fact that a public utility otherwise subject to the jurisdiction of this State is a foreign corporation does not deprive this State of all supervisory and regulatory powers over

securities issued by such a corporation. *State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co.*, 22 N.C. App. 714, 207 S.E.2d 771 (1974), aff'd, 288 N.C. 201, 217 S.E.2d 543 (1975).

**§ 55-143. Suits against foreign corporations authorized to transact business in this State.**

**Applied in Royal Bus. Funds Corp. v. South E. Dev. Corp.**, 32 N.C. App. 362, 232 S.E.2d 215 (1977).

**§ 55-144. Suits against foreign corporations transacting business in the State without authorization.****This Section Gives No Jurisdiction, etc.** —

In accord with 1st paragraph in original. See *Dillon v. Numismatic Funding Corp.*, 29 N.C. App. 513, 225 S.E.2d 137 (1976), rev'd on other grounds, 291 N.C. 674, 231 S.E.2d 629 (1977).

**Breach of Contract outside State.** — Because a cause of action for breach of contract arises at

the time the breach occurs, and since the breach occurred in South Carolina, this section does not apply. *Dillon v. Numismatic Funding Corp.*, 29 N.C. App. 513, 225 S.E.2d 137 (1976), rev'd on other grounds, 291 N.C. 674, 231 S.E.2d 629 (1977).

**§ 55-145. Jurisdiction over foreign corporations not transacting business in this State.****Editor's Note.** —

For article, "Recognition of Foreign Judgments," see 50 N.C.L. Rev. 21 (1971).

For survey of 1973 case law with regard to in personam jurisdiction over out-of-state corporations, see 52 N.C.L. Rev. 850 (1974).

For survey of 1976 case law on civil procedure, see 55 N.C.L. Rev. 914 (1977).

**The jurisdiction created by this section, etc.** —

This section only applies to actions arising in North Carolina. *Dillon v. Numismatic Funding*

Corp., 29 N.C. App. 513, 225 S.E.2d 137 (1976), rev'd on other grounds, 291 N.C. 674, 231 S.E.2d 629 (1977).

**Defendant Must Have Purposely Availed Itself, etc. —**

Regardless of what other contacts may be present, it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protection of its laws. *Equity Assocs. v. Society for Sav.*, 31 N.C. App. 182, 228 S.E.2d 761 (1976), cert. denied, 291 N.C. 711, 232 S.E.2d 203 (1977).

The transaction between third-party defendant and third-party plaintiff clearly met the requirement of "some act by which the defendant purposefully avails himself of the privilege of conducting activities within the forum state, invoking the benefits and protection of its laws." The record discloses that an agreement was made between them for the manufacture by third-party defendant of more than one trailer to be delivered to third-party plaintiff in North Carolina; that the trailers were manufactured from plans provided by third-party plaintiff; that the trailers were invoiced to third-party plaintiff and delivered to it in North Carolina; and that payment was made therefor upon delivery, the trailers having been titled to third-party plaintiff by third-party defendant. *Byrum v. Register's Truck & Equip. Co.*, 32 N.C. App. 135, 231 S.E.2d 39 (1977).

**If Traditional Notions of Fair Play, etc. —**

In accord with original. See *Equity Assocs. v. Society for Sav.*, 31 N.C. App. 182, 228 S.E.2d 761 (1976), cert. denied, 291 N.C. 711, 232 S.E.2d 203 (1977).

**The essential requirements of "minimum contacts," etc. —**

There are a number of factors, some essential and others only having weight, to be considered in determining whether the test of "minimum contacts" and "fair play" has been met. The essential requirements are: (1) The form of substituted service adopted by the forum state must give reasonable assurance that notice to defendant will be actual; (2) there must be some act by which the defendant purposely avails himself of the privilege of conducting activities within the forum state, invoking the benefits and protection of its law; and (3) the legislature of the forum state must have given authority to its courts to entertain litigation against a foreign corporation to the extent permitted by the due process requirement. *Byrum v. Register's Truck & Equip. Co.*, 32 N.C. App. 135, 231 S.E.2d 39 (1977).

**Minimum Contacts Held Not to Exist. —**

In an action for breach of purchase agreements by the seller against the alleged buyer, a foreign corporation, and its agent, the seller fell short of carrying the burden of

establishing that the foreign corporation's activities sufficed to satisfy the requirements of the "minimum contacts" doctrine, and the foreign corporation's motion to dismiss was therefore allowed. *Marshall Exports, Inc. v. Phillips*, 385 F. Supp. 1250 (E.D.N.C.), aff'd, 507 F.2d 47 (4th Cir. 1974).

**Requirements of Due Process. —**

In accord with 1st paragraph in original. See *Equity Assocs. v. Society for Sav.*, 31 N.C. App. 182, 228 S.E.2d 761 (1976), cert. denied, 291 N.C. 711, 232 S.E.2d 203 (1977).

In accord with 4th paragraph in original. See *Byrum v. Register's Truck & Equip. Co.*, 32 N.C. App. 135, 231 S.E.2d 39 (1977).

In addition to the contract itself, defendant was personally served with process at its offices in Connecticut. All of the plaintiffs reside in North Carolina, and they performed acts here which, judging from the parties' affidavits, will be material to this suit. The motel, the subject of the contract, is in North Carolina, and again judging from the affidavits, facts about its construction and condition will be at issue. Because of these facts, it is reasonable, convenient and fair to require Savings to defend this lawsuit in North Carolina. Due process is satisfied. *Equity Assocs. v. Society for Sav.*, 31 N.C. App. 182, 228 S.E.2d 761 (1976), cert. denied, 291 N.C. 711, 232 S.E.2d 203 (1977).

**Requirements of Due Process. —**

Due process requires that defendant have certain minimum contacts with the forum state such that maintenance of suit therein not offend "traditional notions of fair play and substantial justice." *Telerent Leasing Corp. v. Equity Assocs.*, 36 N.C. App. 713, 245 S.E.2d 229 (1978).

**A single contract made in North Carolina is sufficient to subject a nonresident defendant to suit in this State. Telerent Leasing Corp. v. Equity Assocs.**, 36 N.C. App. 713, 245 S.E.2d 229 (1978).

**Contract Substantially Connected, etc. —**

In accord with original. See *Equity Assocs. v. Society for Sav.*, 31 N.C. App. 182, 228 S.E.2d 761 (1976), cert. denied, 291 N.C. 711, 232 S.E.2d 203 (1977); *Telerent Leasing Corp. v. Equity Assocs.*, 36 N.C. App. 713, 245 S.E.2d 229 (1978); *Gro-Mar Pub. Relations, Inc. v. Billy Jack Enterprises, Inc.*, 36 N.C. App. 673, 245 S.E.2d 782 (1978).

**A contract made in this State is one, etc. —**

In accord with 2nd paragraph in original. See *Telerent Leasing Corp. v. Equity Assocs.*, 36 N.C. App. 713, 245 S.E.2d 229 (1978).

For a contract to be made in North Carolina, the final act necessary to make it a binding obligation must be done there. *Chemical Realty Corp. v. Home Fed. Sav. & Loan Ass'n*, 40 N.C. App. 675, 253 S.E.2d 621 (1979).

**Contract Made or to Be Performed, etc. —**

While the mere execution of a contract in North Carolina has never been held to be a

substantial connection, the execution, anticipated performance and continuing part performance of the contract in this State constitute substantial in-state activity; thus, North Carolina's courts have in personam jurisdiction over the assignee of the contract. *Munchak Corp. v. Caldwell*, 25 N.C. App. 652, 214 S.E.2d 194, cert. denied, 287 N.C. 664, 216 S.E.2d 907 (1975).

**Subsection (a)(1), etc. —**

Where the contract between defendant and plaintiff was both made and substantially performed in North Carolina, because plaintiff performed the final act necessary to make it a binding agreement by signing it in the State and the contract was substantially performed here because the motel was built here, if subsection (a)(1) is given its plain and ordinary meaning, it

encompasses the cause of action. *Equity Assocs. v. Society for Sav.*, 31 N.C. App. 182, 228 S.E.2d 761 (1976), cert. denied, 291 N.C. 711, 232 S.E.2d 203 (1977).

**Assignee of pension contract**, assumes, with full knowledge of the pendency of a lawsuit, a portion of the obligations under the contract, and it steps into the shoes of the assignor and thus comes within the statutory criteria for "long-arm" jurisdiction. *Munchak Corp. v. Caldwell*, 25 N.C. App. 652, 214 S.E.2d 194, cert. denied, 287 N.C. 664, 216 S.E.2d 907 (1975).

Cited in *Spartan Leasing, Inc. v. Brown*, 285 N.C. 689, 208 S.E.2d 649 (1974); *Bryson v. Northlake Hilton*, 407 F. Supp. 73 (M.D.N.C. 1976); *Fieldcrest Mills, Inc. v. Mohasco Corp.*, 442 F. Supp. 424 (M.D.N.C. 1977).

**§ 55-146. Service on foreign corporations by service on Secretary of State.**

— (a) Service on the Secretary of State, when he is agent of a foreign corporation as provided in this Chapter, of any process, notice or demand shall be made by the sheriff delivering to and leaving with the Secretary of State duplicate copies of such process, notice or demand. Service of process on the foreign corporation shall be deemed complete when the Secretary of State is so served. The Secretary of State shall endorse upon both copies the time of receipt and shall forthwith send one of such copies by registered or certified mail with return receipt requested addressed to such corporation at its principal office as it appears in the records of the Secretary of State or, if there is no address of the corporation on file with the Secretary of State, then to said corporation at its office as shown in the official registry of the state of its incorporation. The Secretary of State may require the plaintiff or his attorney to furnish such address. A copy of the complaint or order of the clerk extending the time for filing the complaint must be mailed to the corporation with the copy of the summons. When a copy of the complaint is not mailed with the summons, the Secretary of State shall mail a copy of the complaint when it is served on him in the same manner as the copy of summons is required to be mailed.

(b) Upon the return to the Secretary of State of the requested return receipt showing delivery and acceptance of such registered or certified mail, or upon the return of such registered or certified mail showing refusal thereof by such foreign corporation, the Secretary of State shall note thereon the date of such return to him and shall attach either the return receipt or such refused mail including the envelope, as the case may be, to the copy of the process, notice or demand theretofore retained by him and shall mail the same to the clerk of the court in which such action or proceeding is pending and in respect of which such process, notice or demand was issued. Such mailing, in addition to the return by the sheriff, shall constitute the due return required by law. The clerk of the court shall thereupon file the same as a paper in such action or proceeding.

(c) Service made under this section shall have the same legal force and validity as if the service had been made personally in this State. The refusal of any such foreign corporation to accept delivery of the registered or certified mail provided for in subsection (a) of this section or the refusal to sign the return receipt shall not affect the validity of such service; and any foreign corporation refusing to accept delivery of such registered or certified mail shall be charged with knowledge of the contents of any process, notice or demand contained therein.

(d) Whenever service of process is made upon the Secretary of State as herein provided the defendant foreign corporation shall have 30 days from the date when the defendant receives or refuses to accept the registered or certified mail

containing the copy of the complaint sent as in this section provided in which to appear and answer the complaint in the action or proceeding so instituted. Entries on the defendant's return receipt or the refused registered or certified mail shall be sufficient evidence of such date. If the date of acceptance or refusal to accept the registered or certified mail cannot be determined from the entries on the return receipt or from notations of the postal authorities on the envelope, then the date when the defendant accepted or refused to accept the registered or certified mail shall be deemed to be the date that the return receipt or the registered or certified mail was received back by the Secretary of State.

(1977, 2nd Sess., c. 1219, s. 34.)

**Editor's Note. —**

The 1977, 2nd Sess., amendment, effective July 1, 1978, inserted "or certified" between "registered" and "mail" in the second sentence of subsection (a), in two places near the beginning of the first sentence in subsection (b), in two places in the second sentence of subsection (c) and throughout subsection (d).

Session Laws 1977, 2nd Sess., c. 1219, s. 57, contains a severability clause.

As subsections (e), (f) and (g) were not changed by the amendment, they are not set out.

**Actual notice to defendant was not required by either this section or by constitutional guarantees of due process;** the substituted service upon the Secretary of State was sufficient to confer in personam jurisdiction over defendant. Royal Bus. Funds Corp. v. South E. Dev. Corp., 32 N.C. App. 362, 232 S.E.2d 215, cert. denied, 292 N.C. 728, 235 S.E.2d 784 (1977).

cert. denied, 292 N.C. 728, 235 S.E.2d 784 (1977).

**When Service Complete. —** While the remainder of this section provides the procedures which the Secretary of State must follow once he has been served, there is nothing in its language to indicate that the registered mail must be either accepted or rejected in order for service to be complete. Such an interpretation would be contrary to the clear legislative intent as expressed in subsection (a) that service is complete when the Secretary of State is served. Royal Bus. Funds Corp. v. South E. Dev. Corp., 32 N.C. App. 362, 232 S.E.2d 215, cert. denied, 292 N.C. 728, 235 S.E.2d 784 (1977).

Cited in Marshall Exports, Inc. v. Phillips, 507 F.2d 47 (4th Cir. 1974); Gro-Mar Pub. Relations, Inc. v. Billy Jack Enterprises, Inc., 36 N.C. App. 673, 245 S.E.2d 782 (1978).

## § 55-154. Transacting business without certificate of authority.

Cited in Ralph Stachon & Assocs. v. Greenville Broadcasting Co., 35 N.C. App. 540, 241 S.E.2d 884 (1978).

## ARTICLE 11.

### Fees and Taxes.

**§ 55-155. Fees. —** (a) In addition to any taxes prescribed by G.S. 55-156, the Secretary of State shall collect the following fees and remit them to the State Treasurer for the use of the State:

(1) For filing an application to reserve or register a corporate name and for filing an application to renew such a registration (G.S. 55-12(f) and (h)), . . . . .	\$ 5.00
(2) For filing a notice of transfer of a reserved corporate name (G.S. 55-12(g)), . . . . .	5.00
(3) For filing articles of incorporation (G.S. 55-7), . . . . .	5.00
(4) For filing an application of a foreign corporation for a certificate of authority to transact business in this State and issuing a certificate of authority (G.S. 55-138), . . . . .	5.00
(5) For filing a statement of classification of shares (G.S. 55-42(e)), . . . . .	5.00
(6) For filing a statement of the change of a registered office or registered agent, or both, of a domestic or foreign corporation (G.S. 55-14, 55-142, 55-153), . . . . .	3.00

(7) For filing a notice of resignation of a registered agent (G.S. 55-14(d)), . . . . .	\$ 1.00
(8) For filing a notice of resignation of a nonresident director under G.S. 55-33(a), . . . . .	1.00
(9) For filing a certificate of reduction of capital (G.S. 55-48), . . . . .	5.00
(10) For filing articles of amendment (G.S. 55-103), . . . . .	5.00
(11) For filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in this State (G.S. 55-147), . . . . .	5.00
(12) For filing a restated charter (G.S. 55-105), . . . . .	5.00
(13) For filing an application of a foreign corporation for an amended certificate of authority to transact business in this State and issuing an amended certificate of authority (G.S. 55-149), . . . . .	5.00
(14) For filing articles of merger or consolidation (G.S. 55-109), . . . . .	5.00
(15) Repealed by Session Laws 1969, c. 751, s. 45.	
(16) For filing a copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in this State (G.S. 55-148), . . . . .	5.00
(17) For filing a statement setting forth the name and address in this State of the registered agent of a foreign corporation not transacting business in this State (G.S. 55-145), . . . . .	5.00
(18) For receiving any service of process as statutory agent either of a corporation or of a director of a corporation (G.S. 55-15(b), 55-33(d), 55-146), which amount may be recovered from the adverse party as taxable costs by the party to the action or proceeding causing such service to be made if such party prevails in the action or proceeding.	3.00
(19) For issuing a certificate of revocation of authority of a foreign corporation (G.S. 55-152), . . . . .	5.00
(20) Repealed by Session Laws 1969, c. 751, s. 45.	
(21) For filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal (G.S. 55-150), . . . . .	5.00
(22) For filing articles of voluntary dissolution by directors (G.S. 55-116), . . . . .	5.00
(23) For filing articles of voluntary dissolution by written consent of shareholders (G.S. 55-117), . . . . .	5.00
(24) For filing articles of voluntary dissolution by action of directors and stockholders (G.S. 55-118), . . . . .	5.00
(25) For filing a statement of revocation of dissolution (G.S. 55-120), . . . . .	2.00
(26) For filing a certificate of completed liquidation (G.S. 55-121), . . . . .	2.00
(27) For preparing and furnishing a copy of any document, instrument or paper filed or recorded relating to a corporation (G.S. 55-4(c)): . . . . .	
For the first page thereof, . . . . .	1.00
For each additional page, . . . . .	.40
For affixing his certificate and official seal thereto, . . . . .	2.00
(28) For comparing a copy furnished to him of any document, instrument or paper filed or recorded relating to a corporation: . . . . .	
For each page, . . . . .	.20
For affixing his certificate and official seal thereto, . . . . .	2.00
(29) For filing any other document not herein specifically provided for, . . . . .	5.00

(1975, 2nd Sess., c. 981, s. 1.)

**Editor's Note.** — The 1975, 2nd Sess., amendment substituted "\$3.00" for "\$1.00" in subdivision (18). As subsections (b) and (c) were not changed by the amendment, they are not set out.

## ARTICLE 12.

### *Curative Provisions.*

**§ 55-160. Certain conveyances of corporations now dissolved validated.** — All deeds and conveyances of land in this State, made by any corporation of this State prior to January 1, 1969, executed in its corporate name and signed by either its president, vice-president or secretary, and sealed with the common seal of the corporation, where said corporation has been dissolved for at least seven years, and said deed or conveyance has been on record for at least seven years, shall be good and valid, notwithstanding the failure of one of such officers to sign such instrument. (1949, c. 825; G.S., s. 55-41.2; 1955, c. 1371, s. 2; 1979, c. 364.)

**Editor's Note.** — The 1979 amendment substituted "January 1, 1969" for "January 1, 1939" near the beginning of this section.

**§ 55-164.2. Certain corporate documents acknowledged and recorded before January 1, 1977, validated.** — In all cases where a deed, deed of trust or other document executed by a corporation is permitted or required by law to be recorded and said deed, deed of trust or document was properly executed, acknowledged and recorded before January 1, 1977, except the acknowledgment of the officer or officers of the corporation was taken in their individual capacity rather than in their capacity as officers of said corporation, said deed, deed of trust or other document shall be construed to be a deed, deed of trust or other document of the same force and effect as if said acknowledgment was in every way proper. (1977, c. 40, s. 1.)

**Editor's Note.** — Session Laws 1977, c. 40, s. 2, provides that the act shall not apply to pending litigation.

## Chapter 55A.

### Nonprofit Corporation Act.

#### **Article 3.**

##### **Formation, Name and Registered Office.**

Sec.

55A-13. Service of process on corporation.

#### **Article 4.**

##### **Powers and Management.**

55A-15. General powers.

55A-17.1. Indemnification of directors, officers, employees or agents; general provisions.

55A-17.2. Indemnification in actions by outsiders.

55A-17.3. Indemnity for litigation expenses in corporate action.

#### **Article 5.**

##### **Members.**

Sec.

55A-33.1. Action by members without a meeting.

#### **Article 9.**

##### **Fees and Taxes.**

55A-77. Fees.

#### **Article 10.**

##### **Miscellaneous Provisions.**

55A-86. [Repealed.]

## ARTICLE 3.

### *Formation, Name and Registered Office.*

#### **§ 55A-13. Service of process on corporation.**

(b) Whenever a corporation shall fail to appoint or maintain a registered agent in this State, or whenever its registered agent cannot with due diligence be found at the registered office, then the Secretary of State shall be an agent of such corporation upon whom any such process, notice or demand may be served. Service on the Secretary of State of any such process, notice or demand shall be made by delivering to and leaving with him, or with any clerk having charge of the corporation department of his office, duplicate copies of such process, notice or demand. In the event any such process, notice or demand is served on the Secretary of State, he shall immediately cause one of the copies thereof to be forwarded by registered or certified mail, addressed to the corporation at its registered office. Any such corporation so served shall be in court for all purposes from and after the date of such service on the Secretary of State. (1977, 2nd Sess., c. 1219, s. 35.)

**Editor's Note.** — The 1977, 2nd Sess., amendment, effective July 1, 1978, inserted "or certified" in the third sentence of subsection (b).

Session Laws 1977, 2nd Sess., c. 1219, s. 57, contains a severability clause.

As the rest of the section was not changed by the amendment, only subsection (b) is set out.

## ARTICLE 4.

### *Powers and Management.*

#### **§ 55A-15. General powers.** — (a) Every corporation shall have power:

(1) To have perpetual succession by its corporate name unless a limited period of duration is stated in its charter.

(2) To sue and be sued, complain and defend, in its corporate name.

- (3) To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.
- (4) To elect or appoint officers and agents of the corporation, and define their duties and fix their compensation.
- (5) To make and alter bylaws, not inconsistent with its charter or with the laws of this State, for the administration and regulation of the affairs of the corporation.
- (6) If the charter so provides, to make donations for the public welfare or for religious, charitable, scientific or educational purposes; and in time of war to make donations in aid of war activities.
- (7) If the charter so provides, to lend money to its employees other than its officers and directors and otherwise to assist its employees, officers, and directors.
- (8) Subject to any restrictions in the charter, to provide by bylaw, agreement, vote of board of directors or members, or otherwise, for indemnification of any director or officer or former director or officer of the corporation or any person who may have served at its request as a director or officer of another corporation, whether for profit or not for profit, against expenses actually and necessarily incurred by him in connection with the defense of any action, suit or proceeding in which he is made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to have acted in bad faith or to have been liable or guilty by reason of willful misconduct in the performance of duty.
- (9) To cease its corporate activities and surrender its corporate franchise.
- (10) Notwithstanding any other provision of law, a nonprofit corporation or association which operates a public hospital owned by a county, city, hospital district or hospital authority is hereby authorized to purchase liability insurance to protect its officers and directors in any suits alleging actual or alleged negligent acts, errors, omissions or breach of duty in the management of the corporation or association.

(1977, c. 236, s. 1; c. 663; 1979, c. 1027.)

**Editor's Note.** — The first 1977 amendment, in subdivision (8) of subsection (a), substituted "to provide by bylaw, agreement, vote of board of directors or members, or otherwise, for indemnification of" for "to indemnify" and deleted "but such indemnification shall not be deemed exclusive of any other rights to which such director or officer may be entitled, under any bylaw, agreement, vote of board of directors or members, or otherwise" from the end.

The second 1977 amendment, added subdivision (10) to subsection (a).

The 1979 amendment substituted "to have acted in bad faith or to have been liable or guilty by reason of willful" for "to be liable for negligence or" near the end of subdivision (8) of subsection (a).

As the rest of the section was not changed by the amendments, only subsection (a) is set out.

For a survey of 1977 law on business associations, see 56 N.C.L. Rev. 939 (1977).

**§ 55A-17.1. Indemnification of directors, officers, employees or agents; general provisions.** — (a) The indemnification of a director or officer of a corporation permitted by this section or by G.S. 55A-17.2 and 55A-17.3 shall not be deemed exclusive of any other rights to which such director or officer may be entitled, under any bylaw, agreement, vote of board of directors or members, or otherwise with respect to any liability or litigation expenses arising out of his activities as director or officer.

(b) As used in this section and in G.S. 55A-17.2 and 55A-17.3, the term "person" includes the legal representative of such person.

(c) Anything in this section or in G.S. 55A-17.2 or 55A-17.3 to the contrary notwithstanding, a corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in such capacity, or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability.

(d) Expenses incurred by a director, officer, employee or agent in defending a civil or criminal action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding as authorized by the board of directors in the specific case upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount unless it shall be ultimately determined that he is entitled to be indemnified by the corporation as authorized in this section, or in G.S. 55A-17.2 or 55A-17.3, or by any bylaw, agreement, vote of board of directors or members, or otherwise. (1977, c. 236, s. 2.)

**Editor's Note.** — For a survey of 1977 law on business associations, see 56 N.C.L. Rev. 939 (1977).

**§ 55A-17.2. Indemnification in actions by outsiders.** — (a) When by reason of the fact that he is or was serving as director, officer, employee or agent of a corporation, or in any such capacity at the request of the corporation in any other corporation, partnership, joint venture, trust or other enterprise, any person is or was a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceedings, whether civil, criminal, administrative or investigative, not brought by the corporation nor brought by any party seeking derivatively to enforce a liability of such a person to the corporation, such person shall be entitled to indemnification, or reimbursement by the corporation for any expenses, including attorneys' fees, or any liabilities which he may have incurred in consequence of such action, suit or proceeding, under the following conditions:

- (1) If such person is wholly successful in his defense on the merits, or if the proceeding is an administrative or investigative proceeding which does not result in the indictment, fine or penalty of such person, he shall be entitled to reimbursement from the corporation of all his reasonable expenses of defense or participation, including attorneys' fees.
- (2) If such person is wholly successful in his defense otherwise than solely on the merits, the corporation may pay or agree to pay to him such expenses of defense or participation, including attorneys' fees, as the board of directors in good faith shall deem reasonable, regardless of any adverse interest of any or all of the directors.
- (3) If such person is not wholly successful or is unsuccessful in his defense, or with the proceeding to which he is a party results in his indictment, fine or penalty, the corporation may pay or agree to pay, in whole or in part, such expenses of defense or participation, including attorneys' fees, and the amount of any judgment, money decree, fine, penalty or settlement for which he may have become liable, if
  - a. A plan for such payment, in the case of corporations which have members, is approved by a consent in writing signed by the members entitled to vote or such plan is sent to the members entitled to vote, with notice of a members' meeting, whether annual or special, to be held to take action thereon and if at such meeting

a plan is approved by a majority of such members, exclusive of those members to be benefited by the plan if approved, or

- b. A majority of a quorum consisting of directors who are not parties to such action, suit or proceeding shall determine that such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful; and, if the corporation has members, after such determination by the directors, the corporation shall, not later than 60 days before any such payment or agreement to pay is made, send to all members of record on a record date not more than 10 days prior to the date of mailing, at their registered addresses, a statement specifying the persons to be paid, the amounts to be paid, and the nature and status of the suit or proceedings at the time of mailing.
- c. In a proceeding brought by such person for such determination in the superior court of the district where the corporation has its registered office it shall be determined that such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. In such a proceeding, if the corporation has members, the court in its discretion may order notice thereof to be sent to such members in such manner and in such form as it may deem appropriate, at the expense of the corporation; and it may allow all members so notified to be heard in opposition to the determination requested.

(b) The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful. (1977, c. 236, s. 2.)

**§ 55A-17.3. Indemnity for litigation expenses in corporate action.** — (a) When a present or former director, officer, employee or agent of a corporation or any person who has served or is serving in such capacity at the request of the corporation in any other corporation, partnership, joint venture, trust or other enterprise, is sued, alone or with others, in the courts of this State, in any action seeking to establish his liability to the corporation arising out of his alleged dereliction of duty to the corporation, he shall in turn be entitled to indemnification or reimbursement from the corporation for so much of his expenses of defense, including attorneys' fees, as the court in its discretion, upon motion for indemnification or reimbursement, duly made in such action, finds to be reasonable, if:

- (1) Such person is successful in whole or in part in the action against him or in any settlement thereof and the court finds that his conduct fairly and equitably merits such relief; or
  - (2) The court finds, despite his adjudication of liability, that such person has acted honestly and reasonably and that, in view of all the circumstances of the case, his conduct fairly and equitably merits such relief.
- (b) When such action is brought in another state and the result thereof is as would have entitled the defendant officer or director to make a motion in the cause for indemnification or reimbursement of his expenses of defense under subsection (a) of this section if the action had been brought in this State, but no such relief is available in the state in which the action is actually brought, the

defendant officer or director may bring a separate action against the corporation in this State for such indemnification or reimbursement as he might have recovered had the suit against him been brought in this State. Notice of said action for indemnification or reimbursement shall be sent, in such form as the court may approve and at the corporation's expense, to the party or parties plaintiff in the prior action who shall be entitled to be heard.

(c) Whenever indemnification or reimbursement as permitted in this section is sought from a corporation which has members, the court may in its discretion order notice of the claim thereof to be sent to the members in such manner and in such form as it may approve, at the expense of the corporation. All members so notified may be heard in opposition to the relief requested. (1977, c. 236, s. 2.)

### **§ 55A-27.1. Form of records.**

**Editor's Note.** — For survey of 1973 case law on the admissibility of computer print-outs, see 52 N.C.L. Rev. 903 (1974).

dismissed, 290 N.C. 554, 226 S.E.2d 513 (1976).

**Cited in** *In re Arthur*, 291 N.C. 640, 231 S.E.2d 614 (1977).

#### **Conditions under Which, etc. —**

In accord with original. See *State v. Stapleton*, 29 N.C. App. 363, 224 S.E.2d 204, appeal

## ARTICLE 5.

### *Members.*

**§ 55A-33.1. Action by members without a meeting.** — Any action required by this Chapter to be taken at a meeting of the members may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof and filed with the secretary of the corporation as part of the corporate records, whether done before or after the action so taken. (1977, c. 193, s. 2.)

**Editor's Note.** — Session Laws 1977, c. 193, s. 3, makes the act effective July 1, 1977.

## ARTICLE 7.

### *Dissolution and Liquidation.*

### **§ 55A-50. Involuntary dissolution in action by Attorney General.**

**Editor's Note.** — For article entitled, "The Common Law Powers of the Attorney General of North Carolina," see 9 N.C. Cent. L.J. 1 (1977).

### **§ 55A-51. Duties of Attorney General with respect to actions for involuntary dissolution.**

**Editor's Note.** — For article entitled, "The Common Law Powers of the Attorney General of North Carolina," see 9 N.C. Cent. L.J. 1 (1977).

## ARTICLE 9.

*Fees and Taxes.*

<b>§ 55A-77. Fees.</b> — (a) The Secretary of State shall collect the following fees and remit them to the State Treasurer for the use of the State:	
(1) For filing articles of incorporation (G.S. 55A-7), . . . . .	\$5.00
(2) For filing an application of a foreign corporation for a certificate of authority to conduct affairs in this State and issuing a certificate of authority (G.S. 55A-61), . . . . .	5.00
(3) For filing an application of a foreign corporation for an amended certificate of authority to conduct affairs in this State and issuing an amended certificate of authority (G.S. 55A-71), . . . . .	5.00
(4) For filing articles of amendment (G.S. 55A-36), . . . . .	5.00
(5) For filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to conduct affairs in this State (G.S. 55A-69), . . . . .	5.00
(6) For filing articles of merger or consolidation (G.S. 55A-41), . . . . .	5.00
(7) For filing a copy of articles of merger of a foreign corporation holding a certificate of authority to conduct affairs in this State (G.S. 55A-70), . . . . .	5.00
(8) For receiving any service of process as statutory agent of a corporation (G.S. 55A-13, 55A-68, 55A-75), . . . . . which amount may be recovered from the adverse party as taxable costs by the party to the action or proceeding causing such service to be made if such party prevails in the action or proceeding.	3.00
(9) For filing a notice of resignation of a registered agent (G.S. 55A-12(d)), . . . . .	1.00
(10) For filing a statement of the change of registered office or registered agent of a domestic or foreign corporation (G.S. 55A-65, 55A-75, 55A-12), . . . . .	3.00
(11) For filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal (G.S. 55A-72), . . . . .	5.00
(12) Issuance of a certificate of revocation of authority (G.S. 55A-74), . . . . .	5.00
(13) For filing articles of dissolution (G.S. 55A-48), . . . . .	5.00
(14) For preparing and furnishing a copy of any document, instrument or paper filed or recorded relating to a corporation (G.S. 55A-4(c)): . . . . .	
for the first page thereof, . . . . .	1.00
for each additional page, . . . . .	.40
for affixing his certificate and official seal thereto, . . . . .	2.00
(15) For comparing a copy furnished to him of any document, instrument or paper filed or recorded relating to a corporation: . . . . .	
for each page, . . . . .	.20
for affixing his certificate and official seal thereto, . . . . .	2.00
(16) For filing an application to reserve or register a corporate name and for filing an application to renew such a registration (G.S. 55A-10(e) and (f)), . . . . .	5.00
(17) For filing any other document not herein specifically provided for, . . . . .	5.00

(1975, 2nd Sess., c. 981, s. 2.)

**Editor's Note.** — The 1975, 2nd Sess., amendment substituted "\$3.00" for "\$1.00" in subdivision (8) of subsection (a).

As subsections (b) and (c) were not changed by the amendment, they are not set out.

## ARTICLE 10.

### *Miscellaneous Provisions.*

**§ 55A-86:** Repealed by Session Laws 1977, c. 193, s. 1, effective July 1, 1977.

**Cross Reference.** — For present section covering the subject matter of the repealed section, see § 55A-33.1.

**Chapter 55B.****Professional Corporation Act.**

Sec.

55B-2. Definitions.

55B-4. Formation of corporation.

55B-6. Capital stock.

**§ 55B-2. Definitions.** — As used in this Chapter, the following words shall, unless the context requires otherwise, have the following meanings:

- (5) "Professional corporation" means a corporation which is engaged in rendering the professional services as herein specified and defined, pursuant to a certificate of registration issued by the Licensing Board regulating the profession or practice, and which has as its shareholders only those individuals permitted by G.S. 55B-6 of this Chapter to be shareholders and which designates itself as may be required by this statute, and which is organized under the provisions of this Chapter and of Chapter 55, the Business Corporation Act.
- (6) The term "professional service" means any type of personal or professional service of the public which requires as a condition precedent to the rendering of such service the obtaining of a license from a licensing board as herein defined, and pursuant to the following provisions of the General Statutes: Chapter 83, "Architects"; Chapter 84, "Attorneys-at-Law"; Chapter 93, "Public Accountants"; and Article 1, "Practice of Medicine," Article 2, "Dentistry," Article 6, "Optometry," Article 7, "Osteopathy," Article 8, "Chiropractic," Article 9, "Nurse Practice Act," with regard to registered nurses, Article 11, "Veterinaries," Article 12, "Podiatrists," of Chapter 90; Article 18A, "Practicing Psychologist," of Chapter 90; Chapter 89, "Engineering and Land Surveying"; Chapter 89A, "Landscape Architects"; and Chapter 89B, "Foresters." (1969, c. 718, s. 2; 1971, c. 196, s. 1; 1977, c. 53; c. 855, s. 1; 1979, c. 460.)

**Editor's Note. —**

The first 1977 amendment added "and Chapter 89B, 'Foresters'" at the end of subdivision (6).

The second 1977 amendment, effective July 1, 1977, substituted "those individuals permitted by G.S. 55B-6 of this act to be shareholders" for "individuals who themselves are duly licensed to render the same professional service as the corporation" in subdivision (5). Session Laws 1977, c. 855, s. 2, provides: "This act shall become effective from and after July 1, 1977, and shall apply to professional corporations already in existence or organized after such effective date."

The 1979 amendment inserted "Article 9, 'Nurse Practice Act,' with regard to registered nurses," near the middle of subdivision (6).

Article 12 of Chapter 90, referred to in this section, has been rewritten and recodified as Article 12A. Chapter 89, referred to in this section, has been rewritten and recodified as Chapter 89C.

The Editor's Note in the Replacement Volume is in error. Chapter 90, Article 7, has not been repealed.

As the other subdivisions were not changed by the amendments, only the introductory language and subdivisions (5) and (6) are set out.

**§ 55B-4. Formation of corporation.** — A professional corporation under this Chapter may be formed pursuant to the provisions of Chapter 55, the Business Corporation Act, with the following limitations:

- (1) At least one incorporator shall be a "licensee" as hereinabove defined in G.S. 55B-2(2).
- (2) All of the shares of stock of the corporation shall be owned and held by a licensee, or licensees, as hereinabove defined in G.S. 55B-2(2).

Provided, that as to professional corporations rendering services as defined in Chapters 83, 89A and 89C, limited ownership of shares by non-licensees shall be permitted as set forth in G.S. 55B-6.

- (3) At least one director and one officer shall be a "licensee" as hereinabove defined in G.S. 55B-2(2).
- (4) The articles of incorporation, in addition to the requirements of Chapter 55, shall designate the personal services to be rendered by the professional corporation and shall be accompanied by a certification by the appropriate licensing board that the ownership of the shares of stock is in compliance with the requirements of G.S. 55B-4(2) and G.S. 55B-6. (1969, c. 718, s. 4; 1977, c. 855, s. 1.)

**Editor's Note. —**

The 1977 amendment, effective July 1, 1977, added the proviso to the end of subdivision (2) and substituted "the ownership of the shares of stock is in compliance with the requirements of G.S. 55B-4(2) and G.S. 55B-6" for "each of the owners of shares of stock is duly licensed to

render such professional services" at the end of subdivision (4). Session Laws 1977, c. 855, s. 2 provides: "This act shall become effective from and after July 1, 1977, and shall apply to professional corporations already in existence or organized after such effective date."

**§ 55B-6. Capital stock. —** A professional corporation may issue shares of its capital stock only to a licensee as hereinabove defined, and such shareholders may voluntarily transfer such shares of stock issued to him only to another such licensee. No share or shares of any stock of such corporation shall be transferred upon the books of the corporation unless and until the corporation has received a certification of the appropriate licensing board that the transferee of such shares is a licensee as here defined. Provided, it shall be lawful in the case of professional corporations rendering services as defined in Chapters 83, 89A and 89C, for non-licensed employees of such corporation to own not more than one third of the total issued and outstanding shares of such corporation. Upon the transfer of any shares of such corporation to a non-licensed employee of such corporation, the corporation shall inform the appropriate licensing board of the name and address of the transferee and the number of shares issued to such nonprofessional transferee. Any share of stock of such corporation issued or transferred in violation of this section shall be null and void. No shareholder of a professional corporation shall enter into a voting trust agreement or any other type of agreement vesting in another person the authority to exercise the voting power of any or all of his stock. (1969, c. 718, s. 6; 1977, c. 855, s. 1.)

**Editor's Note. —** The 1977 amendment, effective July 1, 1977, added the present third and fourth sentences. Session Laws 1977, c. 855, s. 2, provides: "This act shall become effective

from and after July 1, 1977, and shall apply to professional corporations already in existence or organized after such effective date."

**§ 55B-9. Professional relationship and liability.**

**Liability of Professional Corporations. —** Professional corporations are liable to the same extent as if they were a partnership. Zimmerman

v. Hogg & Allen, 22 N.C. App. 544, 207 S.E.2d 267, rev'd on other grounds, 286 N.C. 24, 209 S.E.2d 795 (1974).

## Chapter 55C.

### Foreign Trade Zones.

Sec.

55C-1. Public corporations authorized to apply for privilege of establishing a foreign trade zone.

55C-2. "Public corporation" defined.

55C-3. Private corporations authorized to apply for privilege of establishing a foreign trade zone.

Sec.

55C-4. Public or private corporation establishing foreign trade zone to be governed by federal law.

**§ 55C-1. Public corporations authorized to apply for privilege of establishing a foreign trade zone.** — Any public corporation of the State of North Carolina, as that term is hereinafter defined is hereby authorized to make application for the privilege of establishing, operating and maintaining a foreign trade zone in accordance with an act of Congress approved June 18, 1934, entitled, "An Act to Provide for the Establishment, Operation and Maintenance of Foreign Trade Zones in Ports of Entry of the United States," to expedite and encourage foreign commerce, and for other purposes. (1975, 2nd Sess., c. 983, s. 132.)

**Editor's Note.** — Session Laws 1975, 2nd Sess., c. 983, s. 152, makes this Chapter effective July 1, 1976.

For a survey of 1977 law on taxation, see 56 N.C.L. Rev. 1128 (1978).

**§ 55C-2. "Public corporation" defined.** — The term "public corporation" for the purposes of this Chapter, means the State of North Carolina or any political subdivision thereof, or any public agency of this State or any political subdivision thereof, or any public board, bureau, commission or authority created by the General Assembly. (1975, 2nd Sess., c. 983, s. 132.)

**§ 55C-3. Private corporations authorized to apply for privilege of establishing a foreign trade zone.** — Any private corporation hereafter organized under the laws of this State for the specific purpose of establishing, operating and maintaining a foreign trade zone in accordance with the act of Congress referred to in G.S. 55C-1 is likewise authorized to make application for the privilege of establishing, operating and maintaining a foreign trade zone in accordance with the said act of Congress. (1975, 2nd Sess., c. 983, s. 132.)

**§ 55C-4. Public or private corporation establishing foreign trade zone to be governed by federal law.** — Any public or private corporation authorized by this Chapter to make application for the privilege of establishing, operating, and maintaining said foreign trade zone, whose application is granted pursuant to the terms of the aforementioned act of Congress is hereby authorized to establish such foreign trade zone and to operate and maintain the same subject to the conditions and restrictions of the said act of Congress and any amendments thereto, and under such rules and regulations and for the period of time that may be prescribed by the board established by said act of Congress to carry out the provisions of such act. (1975, 2nd Sess., c. 983, s. 132; 1977, c. 782, s. 1.)

**Editor's Note.** — The 1977 amendment, effective Jan. 1, 1978, deleted the former last sentence, which read "Any other provision of law notwithstanding, property which is located

in a foreign trade zone established pursuant to this Chapter shall be subject to ad valorem taxes."

## Chapter 57.

### **Hospital, Medical and Dental Service Corporations.**

Sec.

57-1. Regulation and definitions; application of other laws; profit and foreign corporations prohibited.

57-2.1. Members of governing boards.

57-7.1. Coverage for active medical treatment in tax-supported institutions.

Sec.

57-7.2. Contracts to cover any person possessing the sickle cell trait or hemoglobin C trait.

**§ 57-1. Regulation and definitions; application of other laws; profit and foreign corporations prohibited.** — Any corporation heretofore or hereafter organized under the general corporation laws of the State of North Carolina for the purpose of maintaining and operating a nonprofit hospital and/or medical and/or dental service plan whereby hospital care and/or medical and/or dental service may be provided in whole or in part by said corporation or by hospitals and/or physicians and/or dentists participating in such plan, or plans, shall be governed by this Chapter and shall be exempt from all other provisions of the insurance laws of this State, heretofore enacted, unless specifically designated herein, and no laws hereafter enacted shall apply to them unless they be expressly designated therein.

The term "hospital service plan" as used in this Chapter includes the contracting for certain fees for, or furnishing of, hospital care, laboratory facilities, X-ray facilities, drugs, appliances, anesthesia, nursing care, operating and obstetrical equipment, accommodations and/or any and all other services authorized or permitted to be furnished by a hospital under the laws of the State of North Carolina and approved by the North Carolina Hospital Association and/or the American Medical Association.

The term "medical service plan" as used in this Chapter includes the contracting for the payment of fees toward, or furnishing of, medical, obstetrical, surgical and/or any other professional services authorized or permitted to be furnished by a duly licensed physician, except that in any plan in any policy of insurance governed by this Chapter that includes services which are within the scope of practice of a duly licensed optometrist, a duly licensed chiropractor, a duly licensed practicing psychologist, and a duly licensed physician, then the insured or beneficiary shall have the right to choose the provider of the care or service, and shall be entitled to payment of or reimbursement for such care or service, whether the provider be a duly licensed optometrist, a duly licensed chiropractor, a duly licensed practicing psychologist, or a duly licensed physician notwithstanding any provision to the contrary contained in such policy. The term "medical services plan" also includes the contracting for the payment of fees toward, or furnishing of, professional medical services authorized or permitted to be furnished by a duly licensed provider of health services licensed under Chapter 90 of the General Statutes.

For the purposes of this act, a "duly licensed practicing psychologist" shall be defined to only include a psychologist who is duly licensed or certified in the State of North Carolina and has a doctorate degree in psychology and at least two years clinical experience in a recognized health setting, or has met the standards of the National Register of Health Providers in Psychology.

The term "dental service plan" as used in this Chapter includes contracting for the payment of fees toward, or furnishing of dental and/or any other professional services authorized or permitted to be furnished by a duly licensed dentist.

The insured or beneficiary of every "medical service plan" and of every "dental service plan," as those terms are used in this Chapter, or of any policy

of insurance issued thereunder, that includes services which are within the scope of practice of both a duly licensed physician and a duly licensed dentist shall have the right to choose the provider of such care or service, and shall be entitled to payment of or reimbursement for such care or service, whether the provider be a duly licensed physician or a duly licensed dentist notwithstanding any provision to the contrary contained in any such plan or policy.

The term "hospital service corporation" as used in this Chapter is intended to mean any nonprofit corporation operating a hospital and/or medical and/or dental service plan, as herein defined. Any corporation heretofore or hereafter organized and coming within the provisions of this Chapter, the certificate of incorporation of which authorizes the operation of either a hospital or medical and/or dental service plan, or any or all of them, may, with the approval of the Commissioner of Insurance, issue subscribers' contracts or certificates approved by the Commissioner of Insurance, for the payment of either hospital or medical and/or dental fees, or the furnishing of such services, or any or all of them, and may enter into contracts with hospitals for physicians and/or dentists, or any or all of them, for the furnishing of fees or services respectively under a hospital or medical and/or dental service plan, or any or all of them.

No foreign or alien hospital or medical and/or dental service corporation as herein defined shall be authorized to do business in this State. (1941, c. 338, s. 1; 1943, c. 537, s. 1; 1953, c. 1124, s. 1; 1961, c. 1149; 1965, c. 396, s. 1; c. 1169, s. 1; 1967, c. 690, s. 1; 1973, c. 642; 1977, c. 601, ss. 1, 3½.)

**Cross Reference.** —

For provisions applicable to corporations governed by this Chapter which relate to the elimination of discrimination in treatment of handicapped and disabled persons, see § 168-10.

For the Health Maintenance Organization Act of 1979, see Chapter 57B.

**Editor's Note.** —

The 1977 amendment, effective Oct. 1, 1977, inserted "a duly licensed practicing psychologist" in two places in the first sentence

of the third paragraph and added the present fourth paragraph.

Session Laws 1977, c. 601, s. 3, provides: "The right to payment or reimbursement notwithstanding any provision to the contrary contained in any plan or policy shall be applicable only to those plans and policies entered into, issued, or renewed on or after the effective date hereof, there being no legislative intent to impair or enlarge obligations under any existing contracts."

**§ 57-2.1. Members of governing boards.** — (a) For the purpose of this section the words "board of directors" includes the board of directors, trustees, or other governing board.

(b) The board of directors of each hospital service corporation subject to the provisions of this Article shall include persons who are representative of its subscribers and the general public. Less than one half of the directors of any such corporation shall be persons who are licensed to practice medicine in this State or who are paid directors or employees of a corporation organized for hospital purposes. (1979, c. 538, s. 1.)

**Editor's Note.** — Session Laws 1979, c. 538, s. 2, provides that the act shall become effective Jan. 1, 1982.

**§ 57-3. Hospital, physician and dentist contracts.**

**Cross Reference.** — For the Readable Insurance Policies Act, see § 58-364 et seq.

**Amendment Effective July 1, 1981.** — Session Laws 1979, c. 755, s. 17, will amend this section by inserting "in substance" between

"contain" and "a provision" in the first sentence of the second paragraph.

Session Laws 1979, c. 755, s. 20, contains a severability clause.

**§ 57-7.1. Coverage for active medical treatment in tax-supported institutions.** — (a) No hospital or medical or dental service plan, contract or certificate governed by the provisions of Chapter 57 of the General Statutes of North Carolina shall be delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State by the Commissioner of Insurance, after May 21, 1975, unless such plan, contract or certificate provides for the payment of benefits for charges made for medical care rendered in or by duly licensed state tax-supported institutions, including charges for medical care of cerebral palsy, other orthopedic and crippling disabilities, mental and nervous diseases and disorders, mental retardation, alcoholism and drug or chemical dependency, and respiratory illness, on a basis no less favorable than the basis which would apply had the medical care been rendered in or by any other public or private institution or provider. The term "state tax-supported institutions" shall include community mental health centers and other health clinics which are certified as Medicaid providers.

(b) No plan, contract, or certificate shall exclude payment for charges of a duly licensed state tax-supported institution because of its being a specialty facility for one particular type of illness nor because it does not have an operating room and related equipment for the performance of surgery, but it is not required that benefits be payable for domiciliary or custodial care, rehabilitation, training, schooling, or occupational therapy.

(c) The restrictions and requirements of this section shall not apply to any plan, contract, or certificate which is individually underwritten or provided for a specific individual and the members of his family as a nongroup policy, but shall apply only to those hospital service and medical service subscriber plans, contracts, or certificates delivered, issued for delivery, reissued or renewed in this State on and after July 1, 1975. (1975, c. 345, s. 2.)

**§ 57-7.2. Contracts to cover any person possessing the sickle cell trait or hemoglobin C trait.** — No hospital, medical, dental, or any health service governed by this Chapter shall refuse to issue or deliver any individual or group hospital, dental, medical, or health service contract in this State which it is currently issuing for delivery in this State, and which affords benefits or coverage for any medical treatment or service authorized or permitted to be furnished by a hospital, clinic, family health clinic, neighborhood health clinic, health maintenance organization, physician, physician's assistant, nurse practitioner or any medical service facility or personnel, on account of the fact that the person who is to be insured possesses sickle cell trait or hemoglobin C trait; nor shall any such policy issued and delivered in this State carry a higher premium rate or charge on account of the fact that the person who is to be insured possesses sickle cell trait. (1975, c. 599, s. 2.)

**Editor's Note.** — Session Laws 1975, c. 599, s. 3, makes the act effective July 1, 1975, and provides that it shall apply to policies of

insurance delivered or issued for delivery in this State on or after July 1, 1975.

## **Chapter 57A.**

## **Health Maintenance Organization Act.**

**§§ 57A-1 to 57A-29:** Recodified as §§ 57B-1 to 57B-25, effective July 1, 1979.

**Editor's Note.** — This Chapter was rewritten by Session Laws 1979, c. 876, s. 1, effective July 1, 1979, and has been recodified as Chapter B.

## Chapter 57B.

### Health Maintenance Organization Act.

Sec.	Sec.
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57B-11. Dual choice.	57B-25. Severability.
57B-12. Prohibited practices.	
57B-13. Regulation of agents.	
57B-14. Powers of insurers and hospital and medical service corporations.	

**§ 57B-1. Short title.** — This Chapter may be cited as the Health Maintenance Organization Act of 1979. (1977, c. 580, s. 1; 1979, c. 876, s. 1.)

**Editor's Note.** — This Chapter is Chapter 57A as rewritten by Session Laws 1979, c. 876, s. 1, effective July 1, 1979, and recodified. Where appropriate, the historical citations to the sections in former Chapter 57A have been added

to the corresponding sections in the chapter as recodified.

For a survey of 1977 law on health care regulation, see 56 N.C. L. Rev. 857 (1978).

**§ 57B-2. Definitions.** — (a) "Commissioner" means the Commissioner of Insurance.

(b) "Enrollee" means an individual who has been enrolled in a health care plan.

(c) "Evidence of coverage" means any certificate, agreement, or contract issued to an enrollee setting out the coverage to which he is entitled.

(d) "Health care plan" means any arrangement whereby any person undertakes on a prepaid basis to provide, arrange for, pay for, or reimburse any part of the cost of any health care services and at least part of such arrangement consists of arranging for or the provision of health care services, as distinguished from mere indemnification against the cost of such services on a prepaid basis through insurance or otherwise.

(e) "Health care services" means any services included in the furnishing to any individual of medical or dental care, or hospitalization or incident to the furnishing of such care of [or] hospitalization, as well as the furnishing to any person of any and all other services for the purpose of preventing, alleviating, curing, or healing human illness or injury.

(f) "Health maintenance organization" means any person who undertakes to provide or arrange for one or more health care plans.

(g) "Person" includes associations, trusts, or corporations, but does not include professional associations, or individuals.

(h) "Provider" means any physician, hospital, or other person that is licensed or otherwise authorized in this State to furnish health care services. (1977, c. 580, s. 1; 1979, c. 876, s. 1.)

**§ 57B-3. Establishment of health maintenance organizations.** — (a) Notwithstanding any law of this State to the contrary, any person may apply to the Commissioner for and obtain a certificate of authority to establish and operate a health maintenance organization in compliance with this Chapter. No person shall establish or operate a health maintenance organization in this State, nor sell or offer to sell, or solicit offers to purchase or receive advance or periodic consideration in conjunction with a health maintenance organization without obtaining a certificate of authority under this Chapter. A foreign corporation may qualify under this Chapter, subject to its registration to do business in this State as a foreign corporation under Article 17 of Chapter 58.

- (b) (1) It is specifically the intention of this section to permit such persons as were providing health services on a prepaid basis on July 1, 1977, or receiving federal funds under Section 254(c) of Title 42, U.S. Code, as a community health center, [to] continue to operate in the manner which they have heretofore operated.
- (2) Notwithstanding anything contained in this Chapter to the contrary, any person can provide health services on a fee for service basis to individuals who are not enrollees of the organization, and to enrollees for services not covered by the contract, provided that the volume of services in this manner shall not be such as to affect the ability of the health maintenance organization to provide on an adequate and timely basis those services to its enrolled members which it has contracted to furnish under the enrollment contract.
- (3) This Chapter shall not apply to any employee benefit plan to the extent that the Federal Employee Retirement Income Security Act of 1974 preempts State regulation thereof.
- (4) Except as provided in paragraphs (1), (2), and (3) of this subsection, the persons to whom these paragraphs are applicable shall be required to comply with all provisions contained in this Chapter.
- (c) Each application for a certificate of authority shall be verified by an officer or authorized representative of the applicant, shall be in a form prescribed by the Commissioner, and shall be set forth or be accompanied by the following:
- (1) A copy of the basic organizational document, if any, of the applicant such as the articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents, and all amendments thereto;
  - (2) A copy of the bylaws, rules and regulations, or similar document, if any, regulating the conduct of the internal affairs of the applicant;
  - (3) A list of the names, addresses, and official positions of persons who are to be responsible for the conduct of the affairs of the applicant, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee, the principal officers in the case of a corporation, and the partners or members in the case of a partnership or association;
  - (4) A copy of any contract made or to be made between any providers or persons listed in paragraph (3) and the applicant;
  - (5) A statement generally describing the health maintenance organization, its health care plan or plans, facilities, and personnel;
  - (6) A copy of the form of evidence of coverage to be issued to the enrollees;
  - (7) A copy of the form of the group contract, if any, which is to be issued to employers, unions, trustees, or other organizations;
  - (8) Financial statements showing the applicant's assets, liabilities, and sources of financial support. If the applicant's financial affairs are audited by independent certified public accountants, a copy of the applicant's most recent regular certified financial statement shall be deemed to satisfy this requirement unless the Commissioner directs that additional or more recent financial information is required for the proper administration of this Chapter;

- (9) A description of the proposed method of marketing the plan, a financial plan which includes a three-year projection of the initial operating results anticipated, and a statement as to the sources of working capital as well as any other sources of funding;
  - (10) A power of attorney duly executed by such applicant, if not domiciled in this State, appointing the Commissioner and his successors in office, and duly authorized deputies, as the true and lawful attorney of such applicant in and for this State upon whom all lawful process in any legal action or proceeding against the health maintenance organization on a cause of action arising in this State may be served;
  - (11) A statement reasonably describing the geographic area or areas to be served;
  - (12) Such other information as the Commissioner may require to make the determinations required in G.S. 57B-4.
- (d) (1) A health maintenance organization shall, unless otherwise provided for in this Chapter, file a notice describing any modification of the operation set out in the information required by subsection (c). Such notice shall be filed with the Commissioner prior to the modification. If the Commissioner does not disapprove within 30 days of filing, such modification shall be deemed approved.
- (2) The Commissioner may promulgate rules and regulations exempting from the filing requirements of subdivision (1) those items he deems unnecessary. (1977, c. 580, s. 1; 1979, c. 876, s. 1.)

**Cross Reference.** — As to when health maintenance organizations are subject to review and required to obtain certificates under the

Certificate of Need Law, see § 131-178, subsection (b).

**§ 57B-4. Issuance of certificate.** — (a) Before issuing any such certificate, the Commissioner of Insurance may make such an examination or investigation as he deems expedient. The Commissioner of Insurance shall issue a certificate of authority upon the payment of the application fee prescribed in G.S. 57B-23 and upon being satisfied on the following points:

- (1) The applicant is established as a bona fide health maintenance organization as defined by this Chapter;
- (2) The rates charged and benefits to be provided are fair and reasonable;
- (3) The amounts provided as working capital are repayable only out of earned income in excess of amounts paid and payable for operating expenses and expenses of providing services and such reserve as the Department of Insurance deems adequate, as provided hereinafter;
- (4) That the amount of money actually available for working capital be sufficient to carry all acquisition costs and operating expenses for a reasonable period of time from the date of the issuance of the certificate and that the health maintenance organization is financially responsible and may reasonably be expected to meet its obligations to enrollees and prospective enrollees.

(b) In making the determinations required under this section, the Commissioner may consider:

- (1) The financial soundness of the health care plan's arrangements for health care services and the schedule of premiums used in connection therewith;
- (2) The adequacy of working capital;
- (3) Any agreement with an insurer, a hospital or medical service corporation, a government, or any other organization for insuring the payment of the cost of health care services or the provision for automatic applicability of alternative coverage in the event of discontinuance of the plan;

- (4) Any agreement with providers for the provision of health care services; and
  - (5) Any firm commitment of federal funds to the health maintenance organization in the form of a grant, even though such funds have not been paid to the health maintenance organization, provided that the health maintenance organization certifies to the Commissioner that such funds have been committed, that such funds are to be paid to the health maintenance organization with a current fiscal year and that such funds may be used directly for operating purposes and for the benefit of enrollees of the health maintenance organization.
- (c) A certificate of authority shall be denied only after compliance with the requirements of G.S. 57B-19. (1977, c. 580, s. 1; 1979, ch. 876, s. 1.)

**§ 57B-5. Powers of health maintenance organizations.** — (a) The powers of a health maintenance organization include, but are not limited to the following:

- (1) The purchase, lease, construction, renovation, operation, or maintenance of hospitals, medical facilities, or both, and their ancillary equipment, and such property as may reasonably be required for its principal office or for such other purposes as may be necessary in the transaction of the business of the organization;
  - (2) The making of loans to a medical group under contract with it in furtherance of its program or the making of loans to a corporation or corporations under its control for the purpose of acquiring or constructing medical facilities and hospitals or in furtherance of a program providing health care services to enrollees;
  - (3) The furnishing of health care services through providers which are under contract with or employed by the health maintenance organization;
  - (4) The contracting with any person for the performance on its behalf of certain functions such as marketing, enrollment and administration;
  - (5) The contracting with an insurance company licensed in this State, or with a hospital or medical service corporation authorized to do business in this State, for the provision of insurance, indemnity, or reimbursement against the cost of health care services provided by the health maintenance organization;
  - (6) The offering and contracting for the provision or arranging of, in addition to health care services, of:
    - a. Additional health care services;
    - b. Indemnity benefits, covering out-of-area or emergency services; and
    - c. Indemnity benefits, in addition to those relating to out-of-area and emergency services, provided through insurers or hospital or medical service corporations.
- (b) (1) A health maintenance organization shall file notice, with adequate supporting information, with the Commissioner prior to the exercise of any power granted in subsections (a)(1) or (2). The Commissioner shall disapprove such exercise of power if in his opinion it would substantially and adversely affect the financial soundness of the health maintenance organization and endanger its ability to meet its obligations. If the Commissioner does not disapprove within 30 days of the filing, it shall be deemed approved.
- (2) The Commissioner may promulgate rules and regulations exempting from the filing requirement of subdivision (1) those activities having a de minimis effect. (1977, c. 580, s. 1; 1979, ch. 876, s. 1.)

**§ 57B-6. Reserves.** — Every health maintenance organization after the first full year of doing business after the passage of this section shall accumulate and

maintain, in addition to proper reserves for current administrative liabilities and whatever reserves are deemed adequate and proper by the Commissioner of Insurance for unpaid bills, and unearned membership dues, a special contingent surplus or reserve at the following rates annually of its gross annual collections from membership dues, until said reserve shall equal three times its average monthly expenditures:

(1) First \$200,000	4%
(2) Next \$200,000	2%
(3) All above \$400,000	1%

Any such health maintenance organization may accumulate and maintain a contingent reserve in excess of the reserve hereinabove provided for, not to exceed an amount equal to six times the average monthly expenditures.

In the event the Commissioner of Insurance finds that special conditions exist warranting a decrease in the reserves or schedule of reserves, hereinabove provided for, it may be modified by the Commissioner of Insurance accordingly. (1979, c. 876, s. 1.)

**§ 57B-7. Fiduciary responsibilities.** — Any director, officer or partner of a health maintenance organization who receives, collects, disburses, or invests funds in connection with the activities of such organization shall be responsible for such funds in a fiduciary relationship to the enrollees. (1977, c. 580, s. 1; 1979, c. 876, s. 1.)

**§ 57B-8. Evidence of coverage and premiums for health care services.** —

- (a)(1) Every enrollee residing in this State is entitled to evidence of coverage under a health care plan. If the enrollee obtains coverage under a health care plan through an insurance policy or a contract issued by a hospital or medical service corporation, whether by option or otherwise, the insurer or the hospital or medical service corporation shall issue the evidence of coverage. Otherwise, the health maintenance organization shall issue the evidence of coverage.
- (2) No evidence of coverage, or amendment thereto, shall be issued or delivered to any person in this State until a copy of the form of the evidence of coverage, or amendment thereto, has been filed with and approved by the Commissioner.
- (3) An evidence of coverage shall contain:
  - a. No provisions or statements which are unjust, unfair, inequitable, misleading, deceptive, which encourage misrepresentation, or which are untrue, misleading or deceptive as defined in G.S. 57B-12(a); and
  - b. A clear and complete statement, if a contract, or a reasonably complete summary, if a certificate of:
    - 1. The health care services and insurance or other benefits, if any, to which the enrollee is entitled under the health care plan;
    - 2. Any limitations on the services, benefits, or kind of benefits, to be provided, including any deductible or copayment feature;
    - 3. Where and in what manner information is available as to how services may be obtained;
    - 4. The total amount of payment for health care services and the indemnity or service benefits, if any, which the enrollee is obligated to pay with respect to individual contracts, or an indication whether the plan is contributory or noncontributory with respect to group certificates;
    - 5. A clear and understandable description of the health maintenance organization's method of resolving enrollee complaints.

Any subsequent change may be evidenced in a separate document issued to the enrollee.

- (4) A copy of the form of the evidence of coverage to be used in this State, and any amendment thereto, shall be subject to the filing and approval requirements of subsection (b) unless it is subject to the jurisdiction of the Commissioner under the laws governing health insurance or hospital or medical service corporations in which event the filing and approval provisions of such laws shall apply. To the extent, however, that such provisions do not apply the requirements in subsection (c) shall be applicable.
- (b) (1) No schedule of premiums for enrollee coverage for health care services, or amendment thereto, may be used in conjunction with any health care plan until a copy of such schedule, or amendment thereto, has been filed with and approved by the Commissioner.
- (2) Such premiums may be established in accordance with actuarial principles for various categories of enrollees, provided that premiums applicable to an enrollee shall not be individually determined based on the status of his health. However, the premiums shall not be excessive, inadequate, or unfairly discriminatory.
- (c) The Commissioner shall, within a reasonable period, approve any form if the requirements of paragraph (1) are met and any schedule of premiums if the requirements of paragraph (2) are met. It shall be unlawful to issue such form or to use such schedule of premiums until approved. If the Commissioner disapproves such filing, he shall notify the filer. In the notice, the Commissioner shall specify the reasons for his disapproval. A hearing will be granted within 30 days after a request in writing by the person filing. If the Commissioner does not approve or disapprove any form or schedule of premiums within 30 days of the filing of such forms or premiums, they shall be deemed approved.
- (d) The Commissioner may require the submission of whatever relevant information he deems necessary in determining whether to approve or disapprove a filing made pursuant to this section. (1977, c. 580, s. 1; 1979, c. 876, s. 1.)

**Cross Reference.** — For the Readable Insurance Policies Act, see § 58-364 et seq.

**Editor's Note.** — Session Laws 1979, c. 755, s. 18, effective July 1, 1981, amends § 57A-8 in Chapter 57A before the revision of that chapter

by Session Laws 1979, c. 876, s. 1, and recodification as Chapter 57B. The amendment substitutes "90 days" for "30 days" in the last sentence.

**§ 57B-9. Annual report.** — Every such health maintenance organization shall annually on or before the first day of March of each year, file in the office of the Commissioner of Insurance a sworn statement verified by at least two of the principal officers of the health maintenance organization showing its condition on the thirty-first day of December, then next preceding; which shall be in such form as the Commissioner of Insurance shall prescribe. In case any such health maintenance organization shall fail to file any such annual statement as herein required, the said Commissioner of Insurance shall be authorized and empowered to suspend the certificate of authority issued to such health maintenance organization until such statement shall be properly filed. (1977, c. 580, s. 1; 1979, c. 876, s. 1.)

**§ 57B-10. Investments.** — With the exception of investments made in accordance with G.S. 57B-5(a)(1) and (2) and G.S. 57B-5(b), the investable funds of a health maintenance organization shall be invested only in securities or other investments permitted by the laws of this State for the investment of assets constituting the legal reserves of life insurance companies or such other

securities or investments as the Commissioner may permit. (1977, c. 580, s. 1; 1979, c. 876, s. 1.)

**§ 57B-11. Dual choice.** — (a) The State government, or any agency, board, commission, institution, or political subdivision thereof, and any city or county, or board of education, which offers its employees a health benefits plan may make available to and inform its employees or members of the option to enroll in at least one health maintenance organization holding a valid certificate of authority which provides health care services in the geographic areas in which such employees or members reside.

(b) The first time a prepaid health plan is offered, each covered employee must make an affirmative choice between the two or more plans. Thereafter, those who wish to change from one plan to another will be allowed to do so annually.

(c) This section shall impose no responsibilities or duties upon State government or any agency, board, commission, institution or political subdivision thereof or any other employer, either public or private to offer health maintenance organization coverage when no health maintenance organization exists for the purpose of providing health care services in the geographic areas in which the employees or members reside.

(d) No employer in this State shall in any way be required to pay more for health benefits as a result of the application of this section than would otherwise be required by any prevailing collective bargaining agreement or other legally enforceable contract of obligation for the provision of health benefits between such employer and its employees, or in any plan provided voluntarily by an employer.

(e) In the event of election to become subscribers of the health maintenance organization plan or to return to the alternative plan, this shall be done without any penalty as to waiting period, pre-existing conditions provisions, or any other provisions which would otherwise effect the credit for the period. (1979, c. 876, s. 1.)

**§ 57B-12. Prohibited practices.** — (a) No health maintenance organization, or representative thereof, may cause or knowingly permit the use of advertising which is untrue or misleading, solicitation which is untrue or misleading, or any form of evidence of coverage which is deceptive. For purposes of this Chapter:

- (1) A statement or item of information shall be deemed to be untrue if it does not conform to fact in any respect which is or may be significant to an enrollee of, or person considering enrollment in, a health care plan.
- (2) A statement or item of information shall be deemed to be misleading, whether or not it may be literally untrue, if, in the total context in which such statement is made or such item of information is communicated, such statement or item of information may be reasonably understood by a reasonable person, not possessing special knowledge regarding health care coverage, as indicating any benefit or advantage or the absence of any exclusion, limitation, or disadvantage of possible significance to an enrollee of, or person considering enrollment in a health care plan, if such benefit or advantage or absence of limitation, exclusion or disadvantage does not in fact exist.
- (3) An evidence of coverage shall be deemed to be deceptive if the evidence of coverage taken as a whole, and with consideration given to typography and format, as well as language, shall be such as to cause a reasonable person, not possessing special knowledge regarding health care plans and evidences of coverage therefor, to expect benefits, services, premiums, or other advantages which the evidence of coverage does not provide or which the health care plan issuing such evidence of coverage does not regularly make available for enrollees covered under such evidence of coverage.

(b) The provisions of Article 3A of Chapter 58 of the General Statutes shall be construed to apply to health maintenance organizations, health care plans and evidences of coverage except to the extent that the Commissioner determines that the nature of health maintenance organizations, health care plans and evidences of coverage render such sections clearly inappropriate.

(c) An enrollee may not be cancelled or not renewed because of any deterioration in the health of the enrollee.

(d) No health maintenance organization, unless licensed as an insurer, may use in its name, contracts, or literature any of the words "insurance", "casualty", "surety", "mutual", or any other words descriptive of the insurance, casualty, or surety business or deceptively similar to the name or description of any insurance or surety corporation doing business in this State.

(e) The HMO shall not refuse to enroll employees except when they can demonstrate they are unable to arrange adequate services. (1977, c. 580, s. 1; 1979, c. 876, s. 1.)

**§ 57B-13. Regulation of agents.** — The Commissioner may, after notice and hearing, promulgate such reasonable rules and regulations as are necessary to provide for the licensing of agents. (1977, c. 580, s. 1; 1979, c. 876, s. 1.)

**§ 57B-14. Powers of insurers and hospital and medical service corporations.** — (a) An insurance company licensed in this State, or a hospital or medical service corporation authorized to do business in this State, may either directly or through a subsidiary or affiliate organize and operate a health maintenance organization under the provisions of this Chapter. Notwithstanding any other law which may be inconsistent herewith, any two or more such insurance companies, hospital or medical service corporations, or subsidiaries or affiliates thereof, may jointly organize and operate a health maintenance organization. The business of insurance is deemed to include the arranging of health care by a health maintenance organization owned or operated by an insurer or a subsidiary thereof.

(b) Notwithstanding any provision of the insurance and hospital or medical service corporation laws contained in Chapters 57 and 58 of the General Statutes, an insurer or a hospital or medical service corporation may contract with a health maintenance organization to provide insurance or similar protection against the cost of care provided through health maintenance organizations and to provide coverage in the event of the failure of the health maintenance organization to meet its obligations. The enrollees of a health maintenance organization constitute a permissible group under such laws. Among other things, under such contracts, the insurer or hospital or medical service corporation may make benefit payments to health maintenance organizations for health care services rendered by providers pursuant to the health care plan. (1977, c. 580, s. 1; 1979, c. 876, s. 1.)

**§ 57B-15. Examinations.** — (a) The Commissioner may make an examination of the affairs of any health maintenance organization and the contracts, agreements or other arrangements pursuant to its health care plan as often as he deems it necessary for the protection of the interests of the people of this State but not less frequently than once every three years.

(b) Every health maintenance organization shall submit its books and records relating to the health care plan to such examinations and in every way facilitate them. For the purpose of examinations, the Commissioner may administer oaths to, and examine the officers and agents of the health maintenance organization concerning their business.

(c) The expenses of examinations under this section shall be assessed against the organization being examined and remitted to the Commissioner for whom the examination is being conducted.

(d) In lieu of such examination, the Commissioner may accept the report of an examination made by the Commissioner of Insurance or Commissioner of Public Health of another state. (1977, c. 580, s. 1; 1979, c. 876, s. 1.)

**§ 57B-16. Suspension or revocation of certificate of authority.** — (a) The Commissioner may suspend or revoke any certificate of authority issued to a health maintenance organization under this Chapter if he finds that any of the following conditions exist:

- (1) The health maintenance organization is operating significantly in contravention of its basic organizational document, or in a manner contrary to that described in and reasonably inferred from any other information submitted under G.S. 57B-3, unless amendments to such submissions have been filed with and approved by the Commissioner.
- (2) The health maintenance organization issues evidence of coverage or uses a schedule of premiums for health care services which do not comply with the requirements of G.S. 57B-8.
- (3) The health maintenance organization no longer maintains the financial reserve specified in G.S. 57B-6 or is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees.
- (4) The health maintenance organization, or any person on its behalf, has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive or unfair manner.
- (5) The continued operation of the health maintenance organization would be hazardous to its enrollees.
- (6) The health maintenance organization has otherwise failed to substantially comply with this Chapter.

(b) A certificate of authority shall be suspended or revoked only after compliance with the requirements of G.S. 57B-19.

(c) When the certificate of authority of a health maintenance organization is suspended, the health maintenance organization shall not, during the period of such suspension, enroll any additional enrollees except newborn children or other newly acquired dependents of existing enrollees, and shall not engage in any advertising or solicitation whatsoever.

(d) When the certificate of authority of a health maintenance organization is revoked, such organization shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs, and shall conduct no further business except as may be essential to the orderly conclusion of the affairs of such organization. It shall engage in no advertising or solicitation whatsoever. The Commissioner may, by written order, permit such further operation of the organization as he may find to be in the best interest of enrollees, to the end that enrollees will be afforded the greatest practical opportunity to obtain continuing health care coverage. (1977, c. 580, s. 1; 1979, c. 876, s. 1.)

**§ 57B-17. Rehabilitation, liquidation, or conservation of health maintenance organization.** — Any rehabilitation, liquidation or conservation of a health maintenance organization shall be deemed to be the rehabilitation, liquidation, or conservation of an insurance company and shall be conducted under the supervision of the Commissioner pursuant to the law governing the rehabilitation, liquidation, or conservation of insurance companies, except that the provisions of Articles 17B and 17C of Chapter 58 of the General Statutes shall not apply to health maintenance organizations. The Commissioner may apply for an order directing him to rehabilitate, liquidate, or conserve a health maintenance organization upon one or more grounds set out in Article 17A of Chapter 58 of the General Statutes or when in his opinion the continued

operation of the health maintenance organization would be hazardous either to the enrollees or to the people of this State. (1977, c. 580, s. 1; 1979, c. 876, s. 1.)

**§ 57B-18. Regulations.** — The Commissioner may, after notice and hearing, promulgate reasonable rules and regulations as are necessary or proper to carry out the provisions of this Chapter. Such rules and regulations shall be subject to review in accordance with G.S. 57B-19. (1977, c. 580, s. 1; 1979, c. 876, s. 1.)

**§ 57B-19. Administrative procedures.** — (a) When the Commissioner has cause to believe that grounds for the denial of an application for a certificate of authority exist, or that grounds for the suspension or revocation of a certificate of authority exist, he shall notify the health maintenance organization in writing specifically stating the grounds for denial, suspension, or revocation and fixing a time of at least 30 days thereafter for a hearing on the matter.

(b) After such hearing, or upon the failure of the health maintenance organization to appear at such hearing, the Commissioner shall take action as is deemed advisable or written findings which shall be mailed to the health maintenance organization. The action of the Commissioner shall be subject to review by the Superior Court of Wake County. The court may, in disposing of the issue before it, modify, affirm, or reverse the order of the Commissioner in whole or in part.

(c) The provisions of Chapter 150A of the General Statutes of this State shall apply to proceedings under this section to the extent that they are not in conflict with subsections (a) and (b). (1977, c. 580, s. 1; 1979, c. 876, s. 1.)

**§ 57B-20. Fees.** — Every health maintenance organization subject to this Chapter shall pay to the Commissioner the following fees:

- (1) For filing an application for a certificate of authority or amendment thereto, twenty dollars (\$20.00);
- (2) For filing each annual report, ten dollars (\$10.00). (1977, c. 580, s. 1; 1979, c. 876, s. 1.)

**§ 57B-21. Penalties and enforcement.** — (a) The Commissioner may, in lieu of suspension or revocation of a certificate of authority under G.S. 57B-16, levy an administrative penalty in an amount not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00), if reasonable notice in writing is given of the intent to levy the penalty and the health maintenance organization has a reasonable time within which to remedy the defect in its operations which gave rise to the penalty citation.

(b) Any person who violates this Chapter shall be guilty of a misdemeanor and on conviction may be punished by a fine not to exceed five hundred dollars (\$500.00) or by imprisonment for a period not exceeding two years or both, at the discretion of the court.

- (c) (1) If the Commissioner shall for any reason have cause to believe that any violation of this Chapter has occurred or is threatened, the Commissioner may give notice to the health maintenance organization and to the representatives or other persons who appear to be involved in such suspected violation to arrange a conference with the alleged violators or their authorized representatives for the purpose of attempting to ascertain the facts relating to such suspected violation, and, in the event it appears that any violation has occurred or is threatened, to arrive at an adequate and effective means of correcting or preventing such violation.
- (2) Proceedings under this subsection shall not be governed by any formal procedural requirements, and may be conducted in such manner as the Commissioner may deem appropriate under the circumstances.

- (d) (1) The Commissioner may issue an order directing a health maintenance organization or a representative of a health maintenance organization to cease and desist from engaging in any act or practice in violation of the provisions of this Chapter.
- (2) Within 30 days after service of the order of cease and desist, the respondent may request a hearing on the question of whether acts or practices in violation of this Chapter have occurred. Such hearing shall be conducted pursuant to Chapter 150A of the General Statutes, and judicial review shall be available as provided by the said Chapter 150A.
- (e) In the case of any violation of the provisions of this Chapter, if the Commissioner elects not to issue a cease and desist order, or in the event of noncompliance with a cease and desist order issued pursuant to subsection (d), the Commissioner may institute a proceeding to obtain injunctive relief, or seeking other appropriate relief, in the Superior Court of Wake County. (1977, c. 580, s. 1; 1979, c. 876, s. 1.)

**§ 57B-22. Statutory construction and relationship to other laws.** — (a) Except as otherwise provided in this Chapter, provisions of the insurance laws and provisions of hospital or medical service corporation laws shall not be applicable to any health maintenance organization granted a certificate of authority under this Chapter. This provision shall not apply to an insurer or hospital or medical service corporation licensed and regulated pursuant to the insurance laws or the hospital or medical service corporation laws of this State except with respect to its health maintenance organization activities authorized and regulated pursuant to this Chapter.

(b) Solicitation of enrollees by a health maintenance organization granted a certificate of authority, or its representatives, shall not be construed to violate any provision of law relating to solicitation or advertising by health professionals.

(c) Any health maintenance organization authorized under this Chapter shall not be deemed to be practicing medicine and shall be exempt from the provisions of Chapter 90 of the General Statutes relating to the practice of medicine. (1977, c. 580, s. 1; 1979, c. 876, s. 1.)

**§ 57B-23. Filings and reports as public documents.** — All applications, filings and reports required under this Chapter shall be treated as public documents. (1977, c. 580, s. 1; 1979, c. 876, s. 1.)

**§ 57B-24. Confidentiality of medical information.** — Any data or information pertaining to the diagnosis, treatment, or health of any enrollee or applicant obtained from such person or from any provider by any health maintenance organization shall be held in confidence and shall not be disclosed to any person except to the extent that it may be necessary to carry out the purposes of this Chapter; or upon the express consent of the enrollee or applicant; or pursuant to statute or court order for the production of evidence or the discovery thereof; or in the event of claim or litigation between such person and the health maintenance organization wherein such data or information is pertinent. A health maintenance organization shall be entitled to claim any statutory privileges against such disclosure which the provider who furnished such information to the health maintenance organization is entitled to claim. (1977, c. 580, s. 1; 1979, c. 876, s. 1.)

**§ 57B-25. Severability.** — If any section, term, or provision of this Chapter shall be adjudged invalid for any reason, such judgments shall not affect, impair, or invalidate any other section, term, or provision of this Chapter, but the remaining sections, terms, and provisions shall be and remain in full force and effect. (1977, c. 580, s. 1; 1979, c. 876, s. 1.)

## 1979 CUMULATIVE SUPPLEMENT

### Chapter 58.

#### Insurance.

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###### Readable Insurance Policies.

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#### SUBCHAPTER I. INSURANCE DEPARTMENT.

#### ARTICLE 1.

##### *Title and Definitions.*

#### § 58-1. Title of the Chapter.

**Cross Reference.** — For provisions applicable to corporations governed by this chapter which relate to the elimination of discrimination in treatment of handicapped and disabled persons, see § 168-10.

As to hospital, medical, and dental service corporations, see Chapter 57.

For the Health Maintenance Organization Act of 1979, see Chapter 57B.

#### § 58-3. Contract of insurance.

**Editor's Note.** — For comment entitled, "Insurance Contract and Policy in General as it

Relates to North Carolina," see 3 N.C. Cent. L.J. 259 (1972).

**§ 58-3.1. Motor vehicle warranties.** — Any motor vehicle warranty issued by a person as defined in this Article, other than a warranty made solely by the manufacturer or seller without charge or an extended warranty offered as an option by a manufacturer or seller or authorized distributor of foreign manufactured automobiles for charge, guaranteeing indemnity for defective parts, mechanical breakdown and labor shall be a contract of insurance, provided that a product guaranty or warranty which accompanies the sale of a product used in the maintenance or operation of a motor vehicle shall not be a contract of insurance under this Chapter. (1959, c. 866; 1975, cc. 643, 788; 1977, c. 185.)

**Editor's Note.** — The first 1975 amendment added the proviso.

The 1977 amendment inserted "or seller or authorized distributor of foreign manufactured automobiles."

The second 1975 amendment inserted "or an extended warranty offered as an option by a manufacturer for charge."

**§ 58-3.2. Real property warranties.** — Any warranty relating to tangible personal property or fixtures to real property issued in connection with the sale of real property by a person as defined in this Article shall be a contract of insurance, except the following, which shall not be contracts of insurance:

(1) A warranty made by a builder or seller of the real property;

- (2) A warranty incidental to the sale of real property providing for the repair or replacement of the items covered by the warranty for defective parts and mechanical failure or resulting from ordinary wear and tear, which warranty excludes from its coverage damage from recognizable perils such as fire, flood, and wind, which perils do not relate to any defect in the items covered nor result from ordinary wear and tear. (1979, c. 773, s. 1.)

**Cross Reference.** — As to surety bond required for warrants of real property, see § 58-188.9.

**Editor's Note.** — Session Laws 1979, c. 773, s. 3, makes this section effective July 1, 1979.

## ARTICLE 2.

### *Commissioner of Insurance.*

**§ 58-6. Salary of Commissioner of Insurance.** — The salary of the Commissioner of Insurance shall be the same as for superior court judges as set by the General Assembly in the Budget Appropriation Act. (1899, c. 54, ss. 3, 8; 1901, c. 710; 1903, c. 42; c. 771, s. 3; Rev., s. 2756; 1907, c. 830, s. 10; c. 994; 1909, c. 839; 1913, c. 194; 1915, cc. 158, 171; 1917, c. 70; 1919, c. 247, s. 4; C. S., s. 3874; 1921, c. 25, s. 1; 1933, c. 282, s. 5; 1935, c. 293; 1937, c. 342; 1945, c. 383; 1947, c. 1041; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 6; 1967, c. 1130; c. 1237, s. 6; 1969, c. 1214, s. 6; 1971, c. 912, s. 6; 1973, c. 778, s. 6; 1975, 2nd Sess., c. 983, s. 21; 1977, c. 802, s. 42.12.)

**Editor's Note.** —

The 1975, 2nd Sess., amendment, effective July 1, 1976, increased the salary from \$31,000 to \$32,544.

The 1977 amendment, effective July 1, 1977, substituted "the same as for superior court

judges as set by the General Assembly in the Budget Appropriation Act" for "thirty-two thousand five hundred forty-four dollars (\$32,544) a year, payable monthly" at the end of the section.

**§ 58-7.1. Chief deputy commissioner.** — The Commissioner shall appoint and may remove at his discretion a chief deputy commissioner, who, in the event of the absence, death, resignation, disability or disqualification of the Commissioner, or in case the office of Commissioner shall for any reason become vacant, shall have and exercise all the powers and duties vested by law in the Commissioner. He shall receive such compensation as fixed and provided by the Department of Administration. (1945, c. 383; 1957, c. 269, s. 1.)

**Editor's Note.** — Pursuant to Session Laws 1957, c. 269, s. 1, "Department of Administration" has been substituted for

"Budget Bureau" at the end of the last sentence. See § 143-344(a).

**§ 58-7.2. Chief actuary.** — The Commissioner shall appoint and may remove at his discretion a chief actuary, who shall receive such compensation as fixed and provided by the Department of Administration. (1945, c. 383; 1957, c. 269, s. 1.)

**Editor's Note.** — Pursuant to Session Laws 1957, c. 269, s. 1, "Department of Administration" has been substituted for

"Budget Bureau" at the end of the section. See § 143-344(a).

**§ 58-7.3. Other deputies, actuaries, examiners and employees.** — The Commissioner shall appoint or employ and may remove at his discretion such other deputies, actuaries, examiners, clerks and other employees as may be found necessary for the proper execution of the work of the Insurance Department, at such compensation as shall be fixed and provided by the Department of Administration. (1945, c. 383; 1957, c. 269, s. 1.)

**Editor's Note.** — Pursuant to Session Laws 1957, c. 269, s. 1, "Department of Administration" has been substituted for

"Budget Bureau" at the end of the section. See § 143-344(a).

**§ 58-9. Powers and duties of Commissioner.** — The Commissioner shall:

- (4) Receive and thoroughly examine each annual statement required by this Chapter.
- (8) Compile and make available to the public such lists of rates charged, including deviations, and such explanations of coverages that are provided by insurers for and in connection with contracts or policies of (1) insurance against loss to residential real property with not more than four housing units located in this State and any contents thereof or valuable interest therein and other insurance coverages written in connection with the sale of such property insurance and (2) private passenger (nonfleet) motor vehicle liability, physical damage, theft, medical payments, uninsured motorists, and other insurance coverages written in connection with the sale of such insurance, as may be advisable to inform the public of insurance premium differentials and of the nature and types of coverages provided. The explanations of coverages provided for in this section must comply with the provisions of Article 33 of this Chapter. (1899, c. 54, s. 8; 1905, c. 430, s. 3; Rev., s. 4689; C. S., s. 6269; 1945, c. 383; 1947, c. 721; 1965, c. 127, s. 1; 1971, c. 757, s. 1; 1977, c. 376, s. 1; 1979, c. 755, s. 19; c. 881, s. 1.)

**Cross Reference.** —

For the Readable Insurance Policies Act, see § 58-364 et seq.

**Editor's Note.** — The 1977 amendment deleted the former second sentence of subdivision (4), which provided for publication by the Commissioner of the abstract of each annual statement required by this chapter in one of the newspapers of the State.

The first 1979 amendment added subdivision (8).

The second 1979 amendment deleted "and prepare an abstract of each annual statement at the expense of the company, association, order or bureau making the same and receive therefor the sum of four dollars (\$4.00)" at the end of subdivision (4).

Session Laws 1979, c. 755, s. 20, contains a severability clause.

Session Laws 1979, c. 881, s. 2, provides: "This act shall become effective immediately and shall apply to all annual statements filed or required to be filed with the Commissioner of Insurance after January 1, 1979."

As the rest of the section was not changed by the amendment, only the introductory language and subdivisions (4) and (8) are set out.

**May Not Make Substantive Law.** — An administrative agency has no power to promulgate rules and regulations which alter or add to the law it was set up to administer or which have the effect of substantive law. State ex rel. Commissioner of Ins. v. Integon Life Ins. Co., 28 N.C. App. 7, 220 S.E.2d 409 (1975).

**Authority to Regulate Rates.** — The Commissioner of Insurance has no authority to prescribe or regulate premium rates except insofar as that authority has been conferred upon him by statute. State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 24 N.C. App. 223, 210 S.E.2d 441 (1974), cert. denied, 286 N.C. 412, 211 S.E.2d 801 (1975).

The Commissioner's power to make "rules and regulations" can in no way grant him the authority to carry out the "legislative power" of setting rates. State ex rel. Commissioner of Ins. v. Integon Life Ins. Co., 28 N.C. App. 7, 220 S.E.2d 409 (1975).

Nothing in the statutes grant to the Commissioner of Insurance the express or implied authority to set rates for credit life insurance. State ex rel. Commissioner of Ins. v. Integon Life Ins. Co., 28 N.C. App. 7, 220 S.E.2d 409 (1975).

**Neither Express nor Implied Power to Set Rates.** — Clearly, subdivision (1) contains no express grant of authority to set rates and it is not such an implied power as is reasonably necessary for the Commissioner's proper functioning. State ex rel. Commissioner of Ins. v. Integon Life Ins. Co., 28 N.C. App. 7, 220 S.E.2d 409 (1975).

**Effect of Companies' Acquiescence in Rate Setting.** — Commissioner's contention that acquiescence by companies writing credit life insurance in rates set by prior Commissioners of Insurance gives present Commissioner the authority to fix credit life rates is untenable. State ex rel. Commissioner of Ins. v. Integon Life Ins. Co., 28 N.C. App. 7, 220 S.E.2d 409 (1975).

**Rate-making authority, as distinguished from purely administrative functions, must be derived from a clear statutory enactment** granting the Commissioner of Insurance such power. State ex rel. Commissioner of Ins. v. Integon Life Ins. Co., 28 N.C. App. 7, 220 S.E.2d 409 (1975).

**Nothing in § 58-54.3 grants authority to the Commissioner of Insurance** to take any action whatsoever. It merely prohibits unfair methods of competition or unfair or deceptive acts or

practices in the insurance industry, which are exhaustively defined in § 58-54.4. State ex rel. Commissioner of Ins. v. Integon Life Ins. Co., 28 N.C. App. 7, 220 S.E.2d 409 (1975).

Clearly Article 3A of this Chapter generally and § 58-54.3 specifically contain no authority to issue orders setting premium rates. State ex rel. Commissioner of Ins. v. Integon Life Ins. Co., 28 N.C. App. 7, 220 S.E.2d 409 (1975).

**Commissioner Lacks Authority to Remedy Unfair Trade Practices.** — Sections 58-54.5, 58-54.6 and 58-54.7, which provide for the Commissioner's power to act in regard to "any unfair method of competition or in any unfair or deceptive act or practice prohibited by § 58-54.3 . . ." grant no remedial power to the Commissioner to remedy unfair trade practices other than the power to investigate, bring charges and issue cease and desist orders. State ex rel. Commissioner of Ins. v. Integon Life Ins. Co., 28 N.C. App. 7, 220 S.E.2d 409 (1975).

**Applied** in State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 287 N.C. 192, 214 S.E.2d 98 (1975); State ex rel. Commissioner of Ins. v. North Carolina Fire Ins. Rating Bureau, 292 N.C. 70, 231 S.E.2d 882 (1977).

## § 58-9.2. Examinations, investigations and hearings; notice of hearing.

**Arbitrary and Capricious Procedure.** — No notice whatever was given by the Commissioner to the Rating Bureau of his intent to convert the contemplated hearing on the Bureau's motion to vacate the "letter order" into an independent investigation of the reasonableness of existing premium rates for extended coverage insurance pursuant to former § 58-131.2. To so proceed

without such notice and an adequate opportunity to the Bureau to present evidence as to the merits of the existing premium rate level must be deemed arbitrary and capricious. State ex rel. Commissioner of Ins. v. North Carolina Fire Ins. Rating Bureau, 291 N.C. 55, 229 S.E.2d 268 (1976).

## § 58-9.3. Court review of orders and decisions.

### Editor's Note. —

For survey of 1976 case law on insurance, see 55 N.C.L. Rev. 1052 (1977).

**Types of Decisions Reviewed.** — An order by the Commissioner in which, without notice or hearing, he abruptly directed that the Automobile Rate Administrative Office could not follow the standard rule of application for placing into effect changes, whether increases or decreases, in insurance premium rates was not such a decision as is described in § 58-9.4, nor does it fall within any of the categories excepted from review by petition to the Superior Court of Wake County under this section. North Carolina Auto. Rate Administrative Office v. Ingram, 35 N.C. App. 578, 242 S.E.2d 205 (1978).

**Differentiation between This Section and § 58-9.4.** — This section omits any grant to the Commissioner of the authority to seek judicial

review, whereas § 58-9.4 expressly grants him such authority. This omission in an adjacent section of the facility act and in a section that expressly excepts the situation provided for in § 58-9.4 indicates a clear legislative intent to differentiate between these two sections. State Farm Mut. Auto. Ins. Co. v. Ingram, 288 N.C. 381, 218 S.E.2d 364 (1975).

**The powers of the Commissioner are not to be construed broadly so as to include a right of appeal under this section.** State Farm Mut. Auto. Ins. Co. v. Ingram, 288 N.C. 381, 218 S.E.2d 364 (1975).

The Commissioner was not intended to be the representative of the public or to be deemed an aggrieved person so as to permit him to appeal pursuant to the provisions of this section. State Farm Mut. Auto. Ins. Co. v. Ingram, 288 N.C. 381, 218 S.E.2d 364 (1975).

**Review under Chapter 150A.** — Since the scope of review provided in Art. 4, Ch. 150A is substantially broader than that provided by this section, the scope of judicial review applicable to a denial by the Commissioner of Insurance of a plan by a domestic insurance company to reorganize under a holding company structure is that provided for in Art. 4 of Ch. 150A. Occidental Life Ins. Co. v. Ingram, 34 N.C. App. 619, 240 S.E.2d 460 (1977).

**Issuance of Mandatory Injunction Requiring Commissioner to Act.** — The trial court did not exceed its power and authority by issuing its mandatory injunction requiring the Commissioner of Insurance to approve a domestic insurance corporation's plan to reorganize under a holding company structure where the Commissioner acted arbitrarily and capriciously when he disapproved the plan. Occidental Life Ins. Co. v. Ingram, 34 N.C. App. 619, 240 S.E.2d 460 (1977).

**Nor under § 58-248.33.** — The Commissioner is not expressly granted the power to appeal by

§ 58-248.33. State Farm Mut. Auto. Ins. Co. v. Ingram, 288 N.C. 381, 218 S.E.2d 364 (1975).

**But Standing Requirement of Section Applicable in Appeal.** — Where a case involves the right of the Commissioner to seek review before the Court of Appeals and not before the superior court, this section is not expressly applicable. However, since by statutory interpretation and implication this section would extend its application to the analogous, higher appeal to the Court of Appeals, its requirement that the person must be aggrieved in order to appeal still applies. State Farm Mut. Auto. Ins. Co. v. Ingram, 288 N.C. 381, 218 S.E.2d 364 (1975).

**Applied** in State ex rel. Commissioner of Ins. v. Integon Life Ins. Co., 28 N.C. App. 7, 220 S.E.2d 409 (1975); North Carolina Fire Ins. Rating Bureau v. Ingram, 29 N.C. App. 338, 224 S.E.2d 229 (1976).

**Stated** in American Guarantee & Liab. Ins. Co. v. Ingram, 32 N.C. App. 552, 233 S.E.2d 398 (1977).

#### § 58-9.4. Court review of rates and classification.

**Differentiation between § 58-9.3 and This Section.** — Section 58-9.3 omits any grant to the Commissioner of the authority to seek judicial review, whereas this section expressly grants him such authority. This omission in an adjacent section of the facility act and in a section that expressly excepts the situation provided for in this section indicates a clear legislative intent to differentiate between these two sections. State Farm Mut. Auto. Ins. Co. v. Ingram, 288 N.C. 381, 218 S.E.2d 364 (1975).

**This section applies only to orders affecting premium rates** on any class of risks or the propriety of a given classification or classification assignment. State Farm Mut. Auto. Ins. Co. v. Ingram, 288 N.C. 381, 218 S.E.2d 364 (1975).

**Review of Workers' Compensation Rate-Making.** — For a review of the statutory scheme for workers' compensation rate-making, see State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 40 N.C. App. 85, 252 S.E.2d 811 (1979).

**Types of Decisions Reviewed.** — An order by the Commissioner in which, without notice or hearing, he abruptly directed that the Automobile Rate Administrative Office could not follow the standard rule of application for placing into effect changes, whether increases or decreases, in insurance premium rates was not such a decision as is described in this section, nor does it fall within any of the categories excepted from review by petition to the Superior Court of Wake County under § 58-9.3(a). North Carolina Auto. Rate Administrative Office v. Ingram, 35 N.C. App. 578, 242 S.E.2d 205 (1978).

**Not Applicable to Appointment of Agent Representative.** — Where a case involves the appointment of an agent to represent an insurance company, neither this section nor the exceptions to § 58-9.3, other than that for an order covered by this section, are applicable. State Farm Mut. Auto. Ins. Co. v. Ingram, 288 N.C. 381, 218 S.E.2d 364 (1975).

**Findings of Fact Prerequisite to Review.** — Without appropriate findings of fact as required by this section, an order of the Commissioner cannot be judicially reviewed by an appellate court. State ex rel. Commissioner of Ins. v. Compensation Rating & Inspection Bureau, 30 N.C. App. 332, 228 S.E.2d 264 (1976).

**Construction of This Section with Article 12B of This Chapter.** — Prior to the 1977 legislation enacting Article 12B of Chapter 58, it was held that the reviewing court has no inherent authority to fix rates nor to continue them in effect pending a hearing on remand. Under the 1977 legislative scheme, however, the Court of Appeals is not setting a workers' compensation rate when it reverses the Commissioner's order of disapproval. The rate is set by the Commissioner in failing to carry the burden of showing affirmatively and specifically that the filing does not comply with statutory standards. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 40 N.C. App. 85, 252 S.E.2d 811 (1979).

The Commissioner can no longer effectively disapprove a rate filing by inaction or a bare assertion that the Rate Bureau has not carried its burden of proof. Though the new statutory scheme does not shift the ultimate burden of

proof from the Rate Bureau to the Commissioner, it does place on the Commissioner, in disapproving a filing, the burden of affirmatively and specifically showing how the bureau has not carried its burden of proof, and, if the Commissioner fails to do so by substantial evidence, the presumption of *prima facie* correctness given to an order of the Commissioner by §§ 58-9.4 and 58-9.6 is rebutted. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 40 N.C. App. 85, 252 S.E.2d 811 (1979).

If the Commissioner fails to perform the affirmative duties imposed upon him by Article 12B of Chapter 58 after a filing by the Rate Bureau, the filing shall be deemed to be approved, just as there is a deemed approval upon his failure to give notice of hearing within 30 days under § 58-124.21(b). If the Court of Appeals, on appeal from the Commissioner's order of disapproval, finds that the order is not supported by material and substantial evidence, it is then the duty of the court to determine whether the filing complies with the statutory standards and methods and is supported by substantial evidence. If no such compliance is found the disapproval order will be vacated and the filing approved, and this will constitute a final determination under § 58-124.22, which

will require an order distributing the escrowed funds to the members of the Rate Bureau. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 40 N.C. App. 85, 252 S.E.2d 811 (1979).

**Substantial evidence has been described as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.** State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 30 N.C. App. 427, 227 S.E.2d 603 (1976), aff'd in part, rev'd in part, 292 N.C. 1, 231 S.E.2d 867 (1977).

**Substantial evidence is more than a scintilla or a permissible inference.** State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 30 N.C. App. 427, 227 S.E.2d 603 (1976), aff'd in part, rev'd in part, 292 N.C. 1, 231 S.E.2d 867 (1977).

**Applied** in State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 287 N.C. 192, 214 S.E.2d 98 (1975); State ex rel. Commissioner of Ins. v. Integon Life Ins. Co., 28 N.C. App. 7, 220 S.E.2d 409 (1975); North Carolina Fire Ins. Rating Bureau v. Ingram, 29 N.C. App. 338, 224 S.E.2d 229 (1976); State ex rel. Commissioner of Ins. v. North Carolina Fire Ins. Rating Bureau, 292 N.C. 70, 231 S.E.2d 882 (1977).

**§ 58-9.5. Procedure on appeal under § 58-9.4.** — Appeals to the North Carolina Court of Appeals pursuant to G.S. 58-9.4 shall be subject to the following provisions:

- (4) The appeal shall lie to the Court of Appeals as provided in G.S. 7A-29. The procedure for the appeal shall be as provided by the rules of appellate procedure.
- (5), (6) Repealed by Session Laws 1975, c. 391, s. 11, effective July 1, 1975.
- (8) Unless otherwise provided by the rules of appellate procedure, the cause on appeal from the Commissioner of Insurance shall be entitled "State of North Carolina ex rel. Commissioner of Insurance (here add any additional parties in support of the Commissioner's order and their capacity before the Commissioner). Appellee(s) v. (here insert name of appellant and his capacity before the Commissioner), Appellant." Appeals from the Insurance Commissioner pending in the superior courts on January 1, 1972, shall remain on the civil issue docket of such superior court and shall have priority over other civil actions. Appeals to the Court of Appeals under G.S. 7A-29 shall be docketed in accordance with the rules of appellate procedure.

(1975, c. 391, s. 11.)

**Editor's Note.** — The 1975 amendment substituted the present second sentence of subdivision (4) for former provisions outlining the procedure for taking the appeal, repealed subdivisions (5) and (6), also relating to procedure on appeal, and substituted "appellate procedure" for "the Court of Appeals" in two places in subdivision (8). A literal compliance with the language of the 1975 amendatory act would have required "appellate procedure" to be

substituted for "the Court of Appeals" near the beginning of the last sentence of subdivision (8) as well as at the end of that sentence; however, the codifiers have not followed the act literally, but have given it effect according to its obvious intent.

Session Laws 1975, c. 391, s. 16, provides: "This act shall be in effect on and after July 1, 1975, in respect of all appeals from the courts of the trial divisions, the Utilities Commission, the

Industrial Commission, and the Commissioner of Insurance to the courts of the appellate division which shall be taken on and after the effective date. This act shall not apply to appeals taken prior to its effective date."

As the other subdivisions were not changed by the amendment, they are not set out.

#### § 58-9.6. Extent of review under § 58-9.4.

**Construction with Article 12B of This Chapter.** — Prior to the 1977 legislation enacting Article 12B of Chapter 58, it was held that the reviewing court has no inherent authority to fix rates nor to continue them in effect pending a hearing on remand. Under the 1977 legislative scheme, however, the Court of Appeals is not setting a workers' compensation rate when it reverses the Commissioner's order of disapproval. The rate is set by the Commissioner in failing to carry the burden of showing affirmatively and specifically that the filing does not comply with statutory standards. *State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau*, 40 N.C. App. 85, 252 S.E.2d 811 (1979).

The Commissioner can no longer effectively disapprove a rate filing by inaction or a bare assertion that the Rate Bureau has not carried its burden of proof. Though the new statutory scheme does not shift the ultimate burden of proof from the Rate Bureau to the Commissioner, it does place on the Commissioner, in disapproving a filing, the burden of affirmatively and specifically showing how the bureau has not carried its burden of proof, and, if the Commissioner fails to do so by substantial evidence, the presumption of *prima facie* correctness given to an order of the Commissioner by §§ 58-9.4 and 58-9.6 is rebutted. *State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau*, 40 N.C. App. 85, 252 S.E.2d 811 (1979).

If the Commissioner fails to perform the affirmative duties imposed upon him by Article 12B of Chapter 58 after a filing by the Rate Bureau, the filing shall be deemed to be approved, just as there is a deemed approval upon his failure to give notice of hearing within 30 days under § 58-124.21(b). If the Court of Appeals, on appeal from the Commissioner's order of disapproval, finds that the order is not supported by material and substantial evidence, it is then the duty of the court to determine whether the filing complies with the statutory standards and methods and is supported by substantial evidence. If no such compliance is found the disapproval order will be vacated and the filing approved, and this will constitute a final determination under § 58-124.22, which will require an order distributing the escrowed funds to the members of the Rate Bureau. State

For survey of 1976 case law on insurance, see 55 N.C.L. Rev. 1052 (1977).

**Applied** in *State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office*, 287 N.C. 192, 214 S.E.2d 98 (1975); *North Carolina Fire Ins. Rating Bureau v. Ingram*, 29 N.C. App. 338, 224 S.E.2d 229 (1976).

*ex rel. Commissioner of Ins. v. North Carolina Rate Bureau*, 40 N.C. App. 85, 252 S.E.2d 811 (1979).

**"Material and Substantial Evidence".** — A finding that a fact is true because the fact finder finds no reason to believe it is not true is certainly not supported by "material and substantial evidence." *State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office*, 24 N.C. App. 223, 210 S.E.2d 441 (1974), cert. denied, 286 N.C. 412, 211 S.E.2d 801 (1975).

Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office*, 287 N.C. 192, 214 S.E.2d 98 (1975); *State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office*, 30 N.C. App. 427, 227 S.E.2d 603 (1976); *State ex rel. Commissioner of Ins. v. North Carolina Fire Ins. Rating Bureau*, 292 N.C. 70, 231 S.E.2d 882 (1977).

Substantial evidence is more than a scintilla or a permissible inference. *State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office*, 287 N.C. 192, 214 S.E.2d 98 (1975); *State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office*, 30 N.C. App. 427, 227 S.E.2d 603 (1976), aff'd in part, rev'd in part, 292 N.C. 1, 231 S.E.2d 867 (1977).

**Speculative Statements Inadequate.** — The effects on automobile liability insurance costs in this State, if any, of the so-called "energy crisis" and economic conditions including the unemployment rate are difficult, if not impossible, to quantify. Rates cannot be based upon such speculative statements so that the order of the Commissioner was not based on material and substantial evidence and must be reversed. *State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office*, 30 N.C. App. 427, 227 S.E.2d 603 (1976), aff'd in part, rev'd in part, 292 N.C. 1, 231 S.E.2d 867 (1977).

**Review of Workers' Compensation Rate-Making.** — For a review of the statutory scheme for workers' compensation rate-making, see *State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau*, 40 N.C. App. 85, 252 S.E.2d 811 (1979).

**Applied in State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 24 N.C. App. 228, 210 S.E.2d 439 (1974); State ex rel. Commissioner of Ins. v. North Carolina Fire Ins. Rating Bureau, 291 N.C. 55,**

229 S.E.2d 268 (1976); Foremost Ins. Co. v. Ingram, 292 N.C. 244, 232 S.E.2d 414 (1977); State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 293 N.C. 365, 239 S.E.2d 48 (1977).

### § 58-15. Authority over all insurance companies; no exemptions from license.

**Repeal of Section.** — This section is repealed, effective July 1, 1983, by Session Laws 1977, c. 712, s. 4. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

**§ 58-21.1. Annual statements by professional liability insurers.** — (a) Every insurance company authorized to write professional liability insurance in the State shall file in the office of the Commissioner of Insurance, on or before the first day of February in each year, in form and detail as the Commissioner of Insurance prescribes, a statement showing the items set forth hereinafter, as of the preceding thirty-first day of December, signed and sworn to by the chief managing agent or officer thereof, before the Commissioner of Insurance or some officer authorized by law to administer oaths. The Commissioner of Insurance shall, in December of each year, furnish to each of the insurance companies authorized to write professional liability insurance in the State forms for the annual statements: Provided that the Commissioner may, for good and sufficient cause shown by an applicant company, extend the filing date of such annual statement for such company, for a reasonable period of time, not to exceed 30 days.

#### PROFESSIONAL LIABILITY INSURERS: ANNUAL STATEMENT

- (1) Number of claims pending at beginning of year;
- (2) Number of claims pending at end of year;
- (3) Number of claims settled paid:
  - a. Highest award
  - b. Lowest award
  - c. Average award;
- (4) Number of claims closed no payment;
- (5) Number of claims to court in which award paid;
- (6) Number of claims out of court in which award paid;
- (7) Average amount per claim set up in reserve;
- (8) Total premium collection;
- (9) Total expenses less reserve expenses; and
- (10) Total reserve expenses.

(b) The information contained within the reports as required by this section is to be used for internal statistical purposes only. Therefore, such information shall be privileged and not be disseminated to the general public however the statistics obtained therefrom should be available to the public. (1975, 2nd Sess., c. 977, s. 6.)

**Editor's Note.** — Session Laws 1975, 2nd Sess., c. 977, s. 10, makes this section effective July 1, 1976.

Session Laws 1975, 2nd Sess., c. 977, s. 7,

contains a severability clause. Session Laws 1975, 2nd Sess., c. 977, s. 8, provides that the act shall not apply to pending litigation.

**§ 58-21.2. Reporting of products liability claims, premiums, and other information.** — (a) Every insurance company providing products liability insurance or excess insurance above self-insurance to one or more manufacturers, sellers, or distributors in this State shall file with the Commissioner not later than the first day of June in each year, a report containing the following information for the one-year period ending December 31st of the previous year; provided, however, that information for the period preceding June 30, 1979, need not be reported:

- (1) The total amount of earned premiums received during the year from insureds, resident or located in North Carolina, that are attributable to products liability insurance;
- (2) The total number of policies of insureds, resident or located in North Carolina, for which the insurance company provided products liability insurance;
- (3) The total number of insureds, resident or located in North Carolina, whose products liability insurance coverage the insurance company canceled or refused to renew and the reasons therefor;
- (4) The total number of products liability claims filed during the one-year period, broken down by the type of claims;
- (5) The total amount of reserves for the claims in subdivision (4) of this subsection that remained outstanding at the end of the one-year period;
- (6) The total amount paid in settlement or discharge of the claims in subdivision (4) of this subsection for each type of claims;
- (7) The total amount of outstanding reserves for claims filed in years prior to the one-year period; and
- (8) The total amount of reserves for incurred but not reported losses.

The report shall be in the format established by the Commissioner.

(b) The information contained in the reports required by this section is to be used for internal statistical purposes only. (1979, c. 979, s. 1.)

**Editor's Note.** — Session Laws 1979, c. 979, s. 2, provides: "The Legislative Research Commission is authorized to study the products liability laws of this State, examine the effects of any 1979 General Assembly changes in the laws, and study the recommendations of the Task

Force on Product Liability of the United States Department of Commerce and the availability of product liability insurance in North Carolina."

Session Laws 1979, c. 979, s. 3, provides: "The Commission may report the results of its study to the 1981 General Assembly."

### § 58-27.1. Insurance advisory board; organization and powers.

**Procedural Due Process.** — When the deemer provision of former § 58-131.1 was construed in pari materia with the statutes calling for a public hearing, i.e., this section and § 58-27.2, it functioned in conjunction with such requirements to provide procedural due process in rate adjustment proceedings. State ex rel. Commissioner of Ins. v. North Carolina Fire Ins. Rating Bureau, 292 N.C. 70, 231 S.E.2d 882 (1977).

**Temporary Approval under § 58-131.1.** — Where the deemer provision of former § 58-131.1 was triggered by failure of the Commissioner to validly approve or disapprove a proposed rate adjustment, it operated only as a temporary approval pending valid action by the Commissioner as contemplated by subsection (c) of this section and § 58-27.2(a). Thus the Bureau was lawfully entitled to place the proposed rates

into effect, prospectively, under the deemer provision until such time as a valid final order was entered by the Commissioner — either in a proceeding or in a subsequent filing. State ex rel. Commissioner of Ins. v. North Carolina Fire Ins. Rating Bureau, 292 N.C. 70, 231 S.E.2d 882 (1977).

Since the "deemer" provision of former § 58-131.1 operated in conjunction with the hearing provisions, it could not stand alone as a final resolution of the proposal. Final resolution came only after a valid approval or disapproval by the Commissioner. Where the deemer provision was triggered by failure of the Commissioner to validly approve or disapprove a proposed rate adjustment, it operated only as a temporary approval pending valid action by the Commissioner as contemplated by subsection (c) of this section and § 58-27.2(a). Thus, the Bureau

was lawfully entitled to place the proposed rates into effect, prospectively, under the deemer provision until such time as a valid final order was entered by the Commissioner — either in a proceeding or in a subsequent filing. State ex rel. Commissioner of Ins. v. North Carolina Fire Ins. Rating Bureau, 292 N.C. 471, 234 S.E.2d 720 (1977).

**Subsection (c) contemplates the holding of a public hearing** before an order can be entered making a material change in insurance premium rates. State ex rel. Commissioner of Ins. v. North Carolina Fire Ins. Rating Bureau, 291 N.C. 55, 229 S.E.2d 268 (1976).

Section 58-27.2(a) and the rules and regulations made by the Insurance Advisory Board, pursuant to the authority granted by subsection (c), require the Commissioner of Insurance in acting upon a rate filing to hold a public hearing on such proposal after notice in accordance with the rules and regulations. State ex rel. Commissioner of Ins. v. North Carolina Fire Ins. Rating Bureau, 30 N.C. App. 549, 228 S.E.2d 264 (1976), rev'd on other grounds, 292 N.C. 471, 234 S.E.2d 720 (1977).

Both the public and the insurance companies, acting through the Rating Bureau (now

organization), are entitled to a prompt hearing of and determination of each proposal by the Bureau (now organization) for a substantial change in the rates of premium charged. Such hearings must be held as required by subsection (c). State ex rel. Commissioner of Ins. v. North Carolina Fire Ins. Rating Bureau, 291 N.C. 55, 229 S.E.2d 268 (1976).

**Hearings Notwithstanding Administrative Procedure Act.** — The rules adopted by the Insurance Advisory Board, pursuant to subsection (c), concerning hearings to be held by the Commissioner or his authorized representative, remain presently in effect, notwithstanding the Administrative Procedure Act. State ex rel. Commissioner of Ins. v. North Carolina Fire Ins. Rating Bureau, 292 N.C. 471, 234 S.E.2d 720 (1977).

**Applied in State ex rel. Commissioner of Ins. v. North Carolina Fire Ins. Rating Bureau, 29 N.C. App. 237, 224 S.E.2d 223 (1976); State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 292 N.C. 1, 231 S.E.2d 867 (1977).**

**§ 58-27.2. Public hearings on revision of existing schedule or establishment of new schedule; publication of notice.** — (a) Whenever any statutory or licensed insurance rating organization or any insurance company making its own rate filings makes any proposal to revise an existing rating schedule, the effect of which is to increase or decrease the charge for insurance, or to set up a new rating schedule, and such rating schedules are subject to the approval of the Commissioner, such organization or company shall file its proposed change and supporting data with the Commissioner who shall thereafter, before acting upon any such proposal, order a public hearing thereon, if such hearing is required by the rules and regulations adopted by the insurance advisory board and then in accordance therewith, and fix a time and place for such hearing not earlier than 20 days thereafter. The organization or the company making such proposal shall, not more than 10 days prior to the time of such public hearing, cause to be published in a daily newspaper or newspapers published in North Carolina, and in accordance with the rules and regulations of the insurance advisory board, a notice, in the form and content approved by the Commissioner, setting forth the nature and effect of such proposal and the time and place of the public hearing to be held.

(b) The provisions of this section shall be applicable to all rating organizations operating in North Carolina and all companies making independent filings under the provisions of Chapters 58 and 97 of the General Statutes of North Carolina, and shall be in addition to any requirements otherwise made specifically applicable to said organizations and companies. (1949, c. 1079, s. 1; 1977, c. 828, ss. 4, 5.)

**Editor's Note.** — The 1977 amendment, effective Sept. 1, 1977, in subsection (a), substituted "organization" for "bureau" in two places in the first sentence and in one place in the second sentence, and in subsection (b), substituted "organizations" for "bureaus" in

two places. Session Laws 1977, c. 828, s. 25, as amended by Session Laws 1979, c. 824, s. 8, provides: "This act shall become effective on September 1, 1977, and shall not affect any existing policy during the existing term of said policy." Prior to the 1979 amendment, Session

Laws 1977, c. 828, s. 25, provided: "This act shall become effective September 1, 1977, and will expire September 1, 1980, and shall not affect any existing policy during the existing term of said policy."

Session Laws 1977, c. 828, s. 24, contains a severability clause.

**In establishing the rate-making procedures, the legislature provided three methods by which the Commissioner could dispose of proposed rate changes, to wit:** (1) He could approve the proposed rate adjustment; (2) he could disapprove it; or (3) he could do neither for 60 (now 30) days and the proposal was thereupon deemed approved under former § 58-131.1. To avoid the automatic operation of the deemer provision of former § 58-131.1, the Commissioner had to approve or disapprove the proposal in writing within 60 (now 30) days after submission. Approval or disapproval necessarily contemplated action by the Commissioner, and a public hearing under subsection (a) was required prior to such action upon a proposed material rate change. State ex rel. Commissioner of Ins. v. North Carolina Fire Ins. Rating Bureau, 292 N.C. 471, 234 S.E.2d 720 (1977).

**Procedural Due Process.** — When the deemer provision of former § 58-131.1 was construed in pari materia with the statutes calling for a public hearing, i.e., § 58-27.1 and this section, it functioned in conjunction with such requirements to provide procedural due process in rate adjustment proceedings. State ex rel. Commissioner of Ins. v. North Carolina Fire Ins. Rating Bureau, 292 N.C. 70, 231 S.E.2d 882 (1977).

**Hearings and Notice Required.** — Subsection (a) and the rules and regulations made by the Insurance Advisory Board, pursuant to the authority granted by § 58-27.1(c), require the Commissioner of Insurance in acting upon a rate filing to hold a public hearing on such proposal after notice in accordance with the rules and regulations. State ex rel. Commissioner of Ins. v. North Carolina Fire Ins. Rating Bureau, 30 N.C. App. 549, 228 S.E.2d 264 (1976), rev'd on other grounds, 292 N.C. 471, 234 S.E.2d 720 (1977).

**Neither a Rating Bureau nor the Insurance Commissioner may lawfully dispense with the public hearing** in cases in which public hearing is mandated by this section. State ex rel. Commissioner of Ins. v. North Carolina Fire Ins. Rating Bureau, 29 N.C. App. 237, 224 S.E.2d 223, aff'd, 291 N.C. 55, 229 S.E.2d 268 (1976).

**The busy schedule of the Commissioner does not justify failure to comply** with the mandate of this section to hold a public hearing. State ex rel. Commissioner of Ins. v. North Carolina Fire Ins. Rating Bureau, 29 N.C. App. 237, 224 S.E.2d 223, aff'd, 291 N.C. 55, 229 S.E.2d 268 (1976).

**Fair Rates Best Fixed after Hearing.** — The statutory objective of fixing insurance rates which are fair for both the public and the

insurance carriers must be considered in construing these statutes. Fair rates could be fixed best after a hearing on the merits rather than by waiver or default under the deemer provision of former § 58-131.1. State ex rel. Commissioner of Ins. v. North Carolina Fire Ins. Rating Bureau, 30 N.C. App. 549, 228 S.E.2d 264 (1976), rev'd on other grounds, 292 N.C. 471, 234 S.E.2d 720 (1977).

**The Commissioner of Insurance has no authority to disapprove proposed rates without conducting a public hearing.** State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 29 N.C. App. 182, 223 S.E.2d 512 (1976).

**Hearing Indispensable under Subsection (a).** — Whatever the legal effect of a "waiver" by the Fire Insurance Rating Bureau of the "deemer" provisions of former § 58-131.1 was, it was clear that neither the Rating Bureau nor the Insurance Commissioner could lawfully dispense with the public hearing in cases in which a public hearing was mandated by subsection (a). State ex rel. Commissioner of Ins. v. North Carolina Fire Ins. Rating Bureau, 30 N.C. App. 549, 228 S.E.2d 264 (1976), rev'd on other grounds, 292 N.C. 471, 234 S.E.2d 720 (1977).

**And Prevails over former § 58-131.1.** — Insofar as this statutory requirement for a public hearing was repugnant to the "deemer provisions" of former § 58-131.1, the provisions of subsection (a) mandating the public hearing had to prevail. State ex rel. Commissioner of Ins. v. North Carolina Fire Ins. Rating Bureau, 30 N.C. App. 549, 228 S.E.2d 264 (1976), rev'd on other grounds, 292 N.C. 471, 234 S.E.2d 720 (1977); State ex rel. Commissioner of Ins. v. North Carolina Fire Ins. Rating Bureau, 29 N.C. App. 237, 224 S.E.2d 223, aff'd, 291 N.C. 55, 229 S.E.2d 268 (1976).

**No Affirmation of Order without Hearing and Notice.** — To affirm an order denying rate increases when there was no opportunity for notice and hearing subjects both the public and the insurance carriers to danger of arbitrary action by the Commissioner. State ex rel. Commissioner of Ins. v. Compensation Rating & Inspection Bureau, 28 N.C. App. 409, 221 S.E.2d 96 (1976).

**Temporary Approval under former § 58-131.1.** — Where the deemer provision of former § 58-131.1 was triggered by failure of the Commissioner to validly approve or disapprove a proposed rate adjustment, it operated only as a temporary approval pending valid action by the Commissioner as contemplated by § 58-27.1(c) and subsection (a) of this section. Thus the Bureau was lawfully entitled to place the proposed rates into effect, prospectively, under the deemer provision until such time as a valid final order was entered by the Commissioner — either in a proceeding or in

a subsequent filing. State ex rel. Commissioner of Ins. v. North Carolina Fire Ins. Rating Bureau, 292 N.C. 70, 231 S.E.2d 882 (1977).

Since the "deemer" provision of former § 58-131.1 operated in conjunction with the hearing provisions, it could not stand alone as a final resolution of the proposal. Final resolution came only after a valid approval or disapproval by the Commissioner. Where the deemer provision was triggered by failure of the Commissioner to validly approve or disapprove a proposed rate adjustment, it operated only as a temporary approval pending valid action by the Commissioner as contemplated by § 58-27.1(c) and subsection (a). Thus, the Bureau was lawfully entitled to place the proposed rates into effect, prospectively, under the deemer provision until such time as a valid final order

was entered by the Commissioner — either in a proceeding or in a subsequent filing. State ex rel. Commissioner of Ins. v. North Carolina Fire Ins. Rating Bureau, 292 N.C. 471, 234 S.E.2d 720 (1977).

**Withdrawal of Obsolete Filing.** — When, because of delay in setting the hearing, the data upon which a filing was made becomes obsolete and orderly procedure may call for the withdrawal of the old filing and the making of a new one based upon more recently available information, the Rating Bureau may, in its discretion, withdraw a filing if this is done prior to the setting of a public hearing thereon. State ex rel. Commissioner of Ins. v. North Carolina Fire Ins. Rating Bureau, 29 N.C. App. 287, 224 S.E.2d 223, aff'd, 291 N.C. 55, 229 S.E.2d 268 (1976).

## ARTICLE 3.

### *General Regulations for Insurance.*

#### **§ 58-28. State law governs insurance contracts.**

##### **Editor's Note. —**

For comment entitled, "Insurance Contract and Policy in General as it Relates to North Carolina," see 3 N.C. Cent. L.J. 259 (1972).

For article, "Statutes of Limitations in the Conflict of Laws," see 52 N.C.L. Rev. 489 (1974).

#### **§ 58-29. No insurance contracts except under this Chapter.**

**Editor's Note. —** For comment entitled, "Insurance Contract and Policy in General as it

Relates to North Carolina," see 3 N.C. Cent. L.J. 259 (1972).

#### **§ 58-30. Statements in application not warranties.**

##### **Material Representations — As to Attendance of Physicians, Diseases, etc. —**

In an application for a policy of life insurance, written questions relating to health and written answers thereto are deemed material as a matter of law. *Tedder v. Union Fid. Life Ins. Co.*, 436 F. Supp. 847 (E.D.N.C. 1977).

##### **Misrepresentation Need Not Contribute to Loss. —**

The materiality of the misrepresentation is judged in terms of its effect upon the insurer's decision to underwrite the risk and therefore, the actual cause of death does not have to be related to the health matters misrepresented. *Tedder v. Union Fid. Life Ins. Co.*, 436 F. Supp. 847 (E.D.N.C. 1977).

##### **False Material Representations, Although Not Fraudulent, etc. —**

If the representation is material and false, it is

not necessary for avoidance of the policy that the misrepresentation be intentional. *Tedder v. Union Fid. Life Ins. Co.*, 436 F. Supp. 847 (E.D.N.C. 1977).

##### **Questions for Jury. —**

Although it has occasionally been held that the materiality of the misrepresentation is a question of fact for the jury these cases are exceptional and usually involve a dispute as to whether the insured actually had a disease or infirmity at the time of the application or the question of whether the insured's opinion as to his good health was truthful, at least to the insured's knowledge, at the time he applied. *Tedder v. Union Fid. Life Ins. Co.*, 436 F. Supp. 847 (E.D.N.C. 1977).

#### **§ 58-30.3. Discriminatory practices prohibited. —** No insurer shall after September 1, 1975, base any standard or rating plan for private passenger

automobiles or motorcycles, in whole or in part, directly or indirectly, upon the age or sex of the persons insured. (1975, c. 666, s. 1.)

**Purpose of This Section and § 58-30.4.** — This section and § 58-30.4 were designed to eliminate primary classifications utilizing sex or age as a criterion and to give safe drivers a premium reduction to be offset by increasing the premiums to be paid by inexperienced drivers and those drivers with motor vehicle offenses or chargeable accidents on their records. State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 293 N.C. 365, 239 S.E.2d 48 (1977).

The primary purpose of this section and § 58-30.4 was to abolish age and sex as criteria for classifying motor vehicle insurance, both automobile and motorcycle. State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 294 N.C. 60, 241 S.E.2d 324 (1978).

**Motorcycles Not Removed from Plans Applicable to Motor Vehicles.** — The General

Assembly did not by the enactment of this section and § 58-30.4 intend to remove motorcycles from the primary and subclassification plans applicable to motor vehicles generally. State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 294 N.C. 60, 241 S.E.2d 324 (1978).

A new filing was mandated by this section and § 58-30.4, and a review of the 1970 filing could serve no present purpose. The request of the former Automobile Rate Office to be allowed to withdraw the 1970 filing should have been granted. State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 30 N.C. App. 477, 227 S.E.2d 621 (1976), aff'd, 294 N.C. 60, 241 S.E.2d 324 (1978).

Cited in State ex rel. Commissioner of Ins. v. Motors Ins. Corp., 294 N.C. 360, 241 S.E.2d 332 (1978).

**§ 58-30.4. Revised classifications and rates.** — The North Carolina Rate Bureau shall promulgate a revised basic classification plan and a revised subclassification plan for coverages on private passenger (nonfleet) motor vehicles in this State affected by the provisions of G.S. 58-30.3. Said revised basic classification plan will provide for the following four basic classifications to wit: (i) Pleasure use only; (ii) pleasure use except for driving to and from work; (iii) business use; and (iv) farm use. The North Carolina Rate Bureau shall promulgate a revised subclassification plan which appropriately reflects the statistical driving experience and exposure of insureds in each of the four basic classifications provided for above, except that no subclassification shall be promulgated based, in whole or in part, directly or indirectly, upon the age or sex of the person insured. Such revised subclassification plan may provide for premium surcharges for insureds having less than two years' driving experience as licensed drivers, and shall provide for premium surcharges for drivers having a driving record consisting of a record of a chargeable accident or accidents, or having a driving record consisting of a conviction or convictions for a moving traffic violation or violations, or any combination thereof. The classification plans and subclassification plans so promulgated by the Bureau shall be subject to the filing, hearing, disapproval, review and appeal procedures before the Commissioner and the courts as provided for rates and classification plans in G.S. 58-124.20, 58-124.21, and 58-124.22. (1975, c. 666, s. 1; 1977, c. 828, s. 9; 1979, c. 824, s. 7.)

**Editor's Note.** — The 1977 amendment, effective Sept. 1, 1977, substituted "North Carolina Rate Bureau shall promulgate" for "North Carolina Automobile Rate Administrative Office shall file with the Commissioner of Insurance for his approval or other action as provided in G.S. 58-248.1" and "motor vehicles" for "automobiles" in the first sentence, rewrote the third and fourth sentences, added the fifth sentence, and deleted the former second paragraph, which read "The revised basic classification and subclassification

plans specified in this section shall supersede the existing basic classification and subclassification plans on the hereinabove specified coverages." Session Laws 1977, c. 828, s. 25, as amended by Session Laws 1979, c. 824, s. 8, provides: "This act shall become effective September 1, 1977, and shall not affect any existing policy during the existing term of said policy." Prior to the 1979 amendment, Session Laws 1977, c. 828, s. 25, provided: "This act shall become effective September 1, 1977, and will expire September 1, 1980, and shall not affect

any existing policy during the existing term of said policy."

The 1979 amendment, effective June 30, 1979, deleted at the end of the fourth sentence "and the premium income from insureds subject to this premium surcharge shall provide not less than one fourth of the total premium income of insurers in writing and servicing the aforesaid coverages in this State," and substituted "G.S. 58-124.20, 58-124.21, and 58-124.22" for "G.S. 58-128, 58-129, and 58-130" at the end of the last sentence.

Session Laws 1977, c. 828, s. 24, contains a severability clause.

Session Laws 1979, c. 824, s. 9, contains a severability clause.

Session Laws 1979, c. 824, s. 10, provides: "This act will not affect any policy in existence on the effective date of this act [June 30, 1979]."

Session Laws 1979, c. 824, s. 11, provides: "This act will not affect pending litigation."

Sections 58-128, 58-129 and 58-130, referred to in this section, have been repealed. For present provisions as to regulation of insurance rates, see § 58-131.34 et seq.

**Purpose of This Section and § 58-30.3.** — This section and § 58-30.3 were designed to eliminate primary classifications utilizing sex or age as a criterion and to give safe drivers a premium reduction to be offset by increasing the premiums to be paid by inexperienced drivers and those drivers with motor vehicle offenses or chargeable accidents on their records. State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 293 N.C. 365, 239 S.E.2d 48 (1977).

The primary purpose of this section and § 58-30.3 was to abolish age and sex as criteria for classifying motor vehicle insurance, both automobile and motorcycle. State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 294 N.C. 60, 241 S.E.2d 324 (1978).

Both § 58-30.3 and this section apply to private passenger automobiles and

**motorcycles.** State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 30 N.C. App. 477, 227 S.E.2d 621 (1976), aff'd, 294 N.C. 60, 241 S.E.2d 324 (1978).

**Motorcycles Not Removed from Plans Applicable to Motor Vehicles.** — The General Assembly did not by the enactment of this section and § 58-30.3 intend to remove motorcycles from the primary and subclassification plans applicable to motor vehicles generally. State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 294 N.C. 60, 241 S.E.2d 324 (1978).

The legislature intended to classify and subclassify motorcycles in the same manner as automobiles for insurance rate-making purposes. State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 294 N.C. 60, 241 S.E.2d 324 (1978).

The word "basic" in the phrase "four basic classifications" is used to distinguish the four primary classifications from the surcharge subclassifications. State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 293 N.C. 365, 239 S.E.2d 48 (1977).

A new filing was mandated by § 58-30.3 and this section, and a review of the 1970 filing could serve no present purpose. The request of the former Automobile Rate Office to be allowed to withdraw the 1970 filing should have been granted. State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 30 N.C. App. 477, 227 S.E.2d 621 (1976), aff'd, 294 N.C. 60, 241 S.E.2d 324 (1978).

This section provides for a reclassification, not a reduction or an increase, overall, in rates. State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 293 N.C. 365, 239 S.E.2d 48 (1977).

Cited in State ex rel. Commissioner of Ins. v. Motors Ins. Corp., 294 N.C. 360, 241 S.E.2d 332 (1978).

### § 58-31. Stipulations as to jurisdiction and limitation of actions.

**Editor's Note.** — For article, "Statutes of Limitations in the Conflict of Laws," see 52 N.C.L. Rev. 489 (1974).

### § 58-39.4. Definitions.

Cited in State v. Moose, 36 N.C. App. 202, 243 S.E.2d 425 (1978).

### § 58-40. Agents and others must procure license.

**Repeal of Section.** — This section is repealed, effective July 1, 1983, by Session Laws 1977, c.

Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the

program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

**§ 58-40.2. Bond required of brokers.** — (a) Every applicant for a resident broker's license or for the renewal thereof shall file with the application and shall thereafter maintain in force while so licensed a bond in favor of the State of North Carolina for the use of aggrieved parties, executed by an authorized corporate surety approved by the Commissioner, in the amount of five thousand dollars (\$5,000). The bond may be continuous in form, and total aggregate liability on the bond may be limited to the payment of ten thousand dollars (\$10,000). The bond shall be conditioned on the accounting by the broker (i) to any person requesting the broker to obtain insurance for moneys or premiums collected in connection therewith, (ii) to any licensed insurer or agent who provides coverage for such person with respect to any such moneys or premiums, and (iii) to any association of insurers under any plan or plans for the placement of insurance under the laws of North Carolina which afforded coverage for such person with respect to any such moneys or premiums.

(1977, c. 868.)

**Editor's Note. —**

The 1977 amendment, in subsection (a), substituted "five thousand dollars (\$5,000)" for "one thousand dollars (\$1,000)" at the end of the first sentence, substituted "ten thousand dollars (\$10,000)" for "five thousand dollars (\$5,000)" at the end of the second sentence, and in the third sentence, inserted the clause designations, inserted "licensed" and "agent who provides

coverage for such person with respect to any such moneys or premiums, and" in clause (ii), inserted "to" preceding "any association of insurers" in clause (iii), and added "which afforded coverage for such person with respect to any such moneys or premiums" to the end of clause (iii).

As subsection (b) was not changed by the amendment, it is not set out.

**§ 58-42. Revocation of license.**

Cited in *In re Peoples*, 296 N.C. 109, 250 S.E.2d 890 (1978).

**§ 58-44.3. Discrimination forbidden.**

**The prohibition against discrimination in rates** is directed to insurers, agents, brokers and other representatives of insurers. *Hyde Ins. Agency, Inc. v. Dixie Leasing Corp.*, 26 N.C. App. 138, 215 S.E.2d 162 (1975).

**The sanctions provided by statutes for violations of the antirebate provisions** are

directed to the insurers, agents, brokers or other representatives, and the statutes do not declare that contracts in violation of the antirebate provision are void. *Hyde Ins. Agency, Inc. v. Dixie Leasing Corp.*, 26 N.C. App. 138, 215 S.E.2d 162 (1975).

**§ 58-44.5. Rebates prohibited.**

**The prohibition against discrimination in rates** is directed to insurers, agents, brokers and other representatives of insurers. *Hyde Ins. Agency, Inc. v. Dixie Leasing Corp.*, 26 N.C. App. 138, 215 S.E.2d 162 (1975).

**The sanctions provided by statutes for violations of the antirebate provisions** are

directed to the insurers, agents, brokers or other representatives. The statutes do not declare that contracts in violation of the antirebate provision are void. *Hyde Ins. Agency, Inc. v. Dixie Leasing Corp.*, 26 N.C. App. 138, 215 S.E.2d 162 (1975).

## ARTICLE 3A.

*Unfair Trade Practices.***§ 58-54.1. Declaration of purpose.**

**The purpose of this Article is not to make these sections the exclusive North Carolina remedy for unfair trade practices in the insurance industry.** Ray v. United Family Life Ins. Co., 430 F. Supp. 1353 (W.D.N.C. 1977).

**Federal Anti-Trust Law Applicable.** — This Article was enacted to regulate trade practices in the insurance business in accordance with directives from federal anti-trust law. State ex rel. Commissioner of Ins. v. Integon Life Ins. Co., 28 N.C. App. 7, 220 S.E.2d 409 (1975).

This Article does not so comprehensively regulate unfair trade practices in the business of insurance in North Carolina as to preclude subjecting the acts complained of to the Sherman Anti-Trust Act, 15 U.S.C.A. § 1 et seq.

**§ 58-54.3. Unfair methods of competition or unfair and deceptive acts or practices prohibited.**

**Nothing in this section grants authority to the Commissioner of Insurance to take any action whatsoever.** It merely prohibits unfair methods of competition or unfair or deceptive acts or practices in the insurance industry, which are exhaustively defined in § 58-54.4. State ex rel. Commissioner of Ins. v. Integon Life Ins. Co., 28 N.C. App. 7, 220 S.E.2d 409 (1975).

**Limited Remedial Powers.** — Moreover, §§ 58-54.5, 58-54.6 and 58-54.7, which provide for the Commissioner's power to act in regard to "any unfair method of competition or in any unfair or deceptive act or practice prohibited by G.S. 58-54.3 . . .," grant no remedial power to the Commissioner to remedy unfair trade practices other than the power to investigate, bring

Ray v. United Family Life Ins. Co., 430 F. Supp. 1353 (W.D.N.C. 1977).

**Plaintiff can recover damages under § 75-1.1 even though unfair methods of competition perpetrated by persons engaged in the business of insurance are regulated by the insurance statutes which do not provide for civil damage actions.** Ray v. United Family Life Ins. Co., 430 F. Supp. 1353 (W.D.N.C. 1977).

**No Rate Setting Authority.** — Clearly Article 3A of this Chapter generally and § 58-54.3 specifically contain no authority to issue orders setting premium rates. State ex rel. Commissioner of Ins. v. Integon Life Ins. Co., 28 N.C. App. 7, 220 S.E.2d 409 (1975).

charges and issue cease and desist orders. State ex rel. Commissioner of Ins. v. Integon Life Ins. Co., 28 N.C. App. 7, 220 S.E.2d 409 (1975).

**Charging of Excessive Rates Not within This Section.** — Nothing in § 58-54.4 declares the charging of excessive rates to be an act or practice within the prohibition of this section. State ex rel. Commissioner of Ins. v. Integon Life Ins. Co., 28 N.C. App. 7, 220 S.E.2d 409 (1975).

**Nor Orders Setting Rates.** — Clearly Article 3A of this Chapter generally and this section specifically contain no authority to issue orders setting premium rates. State ex rel. Commissioner of Ins. v. Integon Life Ins. Co., 28 N.C. App. 7, 220 S.E.2d 409 (1975).

**§ 58-54.4. Unfair methods of competition and unfair or deceptive acts or practices defined.** — The following are hereby defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:

- (11) In connection with first-party claims, committing or performing with such frequency as to indicate a general business practice any of the following:
  - a. Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;
  - b. Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

- c. Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;
- d. Refusing to pay claims without conducting a reasonable investigation based upon all available information;
- e. Failing to affirm or deny coverage of claims within a reasonable time after proof-of-loss statements have been completed;
- f. Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear;
- g. Compelling [the] insured to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insured;
- h. Attempting to settle a claim for less than the amount to which a reasonable man would have believed he was entitled;
- i. Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of, the insured;
- j. Making claims payments to insureds or beneficiaries not accompanied by [a] statement setting forth the coverage under which the payments are being made;
- k. Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;
- l. Delaying the investigation or payment of claims by requiring an insured claimant, or the physician, of [or] either, to submit a preliminary claim report and then requiring the subsequent submission of formal proof-of-loss forms, both of which submissions contain substantially the same information;
- m. Failing to promptly settle claims where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; and
- n. Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement. (1949, c. 1112; 1955, c. 850, s. 3; 1967, c. 935, s. 2; 1975, c. 668.)

**Editor's Note. —**

The 1975 amendment added subdivision (11).

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (11) are set out.

**The prohibition against discrimination in rates** is directed to insurers, agents, brokers and other representatives of insurers. Hyde Ins. Agency, Inc. v. Dixie Leasing Corp., 26 N.C. App. 138, 215 S.E.2d 162 (1975).

**The sanctions provided by statutes for violations of the antirebate provisions** are

directed to the insurers, agents, brokers or other representatives. The statutes do not declare that contracts in violation of the antirebate provision are void. Hyde Ins. Agency, Inc. v. Dixie Leasing Corp., 26 N.C. App. 138, 215 S.E.2d 162 (1975).

**Nothing in this section declares the charging of excessive rates to be an act or practice within the prohibition of § 58-54.2.** State ex rel. Commissioner of Ins. v. Integon Life Ins. Co., 28 N.C. App. 7, 220 S.E.2d 409 (1975).

## § 58-54.5. Power of Commissioner.

**Limited Remedial Power.** — Sections 58-54.6, 58-54.7, and this section, which provide for the Commissioner's power to act in regard to "any unfair method of competition or in any unfair or

deceptive act or practice prohibited by § 58-54.3 . . .," grant no remedial power to the Commissioner to remedy unfair trade practices other than the power to investigate, bring

charges and issue cease and desist orders. State ex rel. Commissioner of Ins. v. Integon Life Ins. Co., 28 N.C. App. 7, 220 S.E.2d 409 (1975).

### § 58-54.6. Hearings, witnesses, appearances, production of books and service of process.

**Limited Remedial Power.** — Sections 58-54.5, 58-54.7, and this section, which provide for the Commissioner's power to act in regard to "any unfair method of competition or in any unfair or deceptive act or practice prohibited by § 58-54.3 . . .," grant no remedial power to the

Commissioner to remedy unfair trade practices other than the power to investigate, bring charges and issue cease and desist orders. State ex rel. Commissioner of Ins. v. Integon Life Ins. Co., 28 N.C. App. 7, 220 S.E.2d 409 (1975).

### § 58-54.7. Cease and desist orders and modifications thereof.

**Limited Remedial Power.** — Sections 58-54.5, 58-54.6 and this section, which provide for the Commissioner's power to act in regard to "any unfair method of competition or in any unfair or deceptive act or practice prohibited by § 58-54.3 . . .," grant no remedial power to the

Commissioner to remedy unfair trade practices other than the power to investigate, bring charges and issue cease and desist orders. State ex rel. Commissioner of Ins. v. Integon Life Ins. Co., 28 N.C. App. 7, 220 S.E.2d 409 (1975).

### § 58-54.12. Provisions of Article additional to existing law.

**Applied in Ray v. United Family Life Ins. Co.,**  
430 F. Supp. 1353 (W.D.N.C. 1977).

## ARTICLE 4.

### *Insurance Premium Financing.*

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**Repeal of Article.** — This Article is repealed, effective July 1, 1983, by Session Laws 1977, c. 712, s. 4. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the

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programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

### § 58-56.1. Exceptions to license requirements.

#### **Editor's Note. —**

For survey of 1976 case law on insurance, see 55 N.C.L. Rev. 1052 (1977).

**Agent May Impose Finance Charge.** — Section 24-11 and this section authorize an insurance agent who extends customer credit on an open account to impose a finance charge on his own customers in an amount not to exceed an aggregate annual rate of 18 percent. Hyde Ins.

Agency, Inc. v. Noland, 30 N.C. App. 503, 227 S.E.2d 169 (1976).

**Providing Notice Given at Time Credit Extended.** — The creditor could collect a finance charge on an open insurance account under the provisions of § 24-11(a) provided the person to whom the credit is extended had been notified by the creditor when the credit was extended of all the details and circumstances pertaining to the

imposition of finance charges. Hyde Ins. Agency, Inc. v. Noland, 30 N.C. App. 503, 227 S.E.2d 169 (1976).

It was the intention of the legislature to authorize the imposition of finance charges on an open insurance account, even though there had not been any prior express agreement

between the parties regarding such charges. Such charges could not be imposed unless the debtor was given proper notice that the creditor intended to impose such finance charges. Hyde Ins. Agency, Inc. v. Noland, 30 N.C. App. 503, 227 S.E.2d 169 (1976).

## ARTICLE 4A.

### *Insurance Business Through Credit Cards Prohibited.*

**§ 58-61.2. Solicitation, negotiation or payment of premiums on insurance policies through credit card facilities prohibited; exceptions.** — Except as otherwise provided herein, no authorized insurer and no representative of such insurer or insurance broker shall employ or avail itself of the facilities of any person, firm or corporation engaged in the credit card business to solicit or negotiate any contract of insurance upon any life or risk within the State of North Carolina, or accept the payment of premiums upon a policy of insurance, insuring any life or risk in the State of North Carolina, through the use of any credit card facility. Except as otherwise provided herein, no person, firm or corporation engaged in the business of extending credit through a credit card system shall, on behalf of any insurer, its representative or any insurance broker, utilize his or its credit card facilities to solicit for, negotiate contracts of insurance or accept the payment of premiums upon any contract of insurance from credit card holders or prospective credit card holders who reside in this State. The solicitation for and the negotiation of policies of insurance prohibited by this section shall include, but shall not be limited to, the transmittal of applications for insurance, premium rate schedules, circulars, letters or sales literature pertaining to insurance to credit card holders or prospective credit card holders who reside in this State. Credit card business as used in this section shall mean the business of extending credit to persons who are holders of credit cards issued by the credit card facility or organization entitling the holder to pay charges for purchases or other transactions through the use of credit card facilities.

Nothing in this Article shall prohibit an authorized insurer, the representative of such insurer, or an insurance broker from accepting payment of an insurance premium through a credit card facility provided and operated by a banking corporation principally domiciled in this State and doing business under the laws of the State of North Carolina or the United States. No such bank shall be prohibited from making such credit card facility available for this limited purpose, provided, that all records relating to the payment of insurance premiums through such credit card facility are maintained within the State of North Carolina.

Nothing in this Article shall prohibit an authorized insurer, the representative of such insurer, or an insurance broker from notifying its or his customers or prospective customers through means other than credit card facilities of the availability of credit card facilities for the payment of insurance premiums.

Nothing in this Article shall prohibit any authorized insurer qualified to do business in the State of North Carolina pursuant to the provisions of this Chapter, and any representative of such insurer or insurance broker, from employing or availing itself of the facilities of any person, firm or corporation engaged in the business of extending credit through a credit card system for the limited purposes of soliciting for or negotiating any contract of travel accident insurance upon any life or risk within the State of North Carolina arising from travel, including but not limited to airline flight insurance, or accepting the

payment of premiums thereon, through the use of any credit card facility. Nor shall anything in this Article prohibit any person, firm or corporation engaged in the business of extending credit through a credit card system on behalf of any insurer, its representative or any insurance broker, from utilizing his or its credit card facilities for the limited purposes of soliciting for or negotiating contracts of travel accident insurance, including but not limited to airline flight insurance, or accepting the payment of premiums thereon, from credit card holders or prospective credit card holders who reside in this State. (1967, c. 1245; 1979, c. 528.)

**Editor's Note.** The 1979 amendment added the last paragraph.

## ARTICLE 5.

### *License Fees and Taxes.*

**§ 58-63. Schedule of fees and charges.** — The Commissioner of Insurance shall collect and pay into the State treasury fees and charges as follows:

(2) Repealed by Session Laws 1977, c. 376, s. 2.

(3) The Commissioner shall receive for copy of any record or paper in his office fifty cents (50¢) per copy sheet and one dollar (\$1.00) for certifying same, or any fact or data from the records of his office; for examination of any foreign company, not less than forty dollars (\$40.00) per diem and all expenses or the fees as prescribed by the Examination Committee of the National Association of Insurance Commissioners, and for examining any domestic company, actual expenses incurred; for the examination and approval of charters of companies, five dollars (\$5.00). Notwithstanding the provisions of G.S. 138-6, the Commissioner of Insurance is authorized to pay examiners an amount in lieu of traveling expenses equal to the rate charged to and collected from the companies, associations or orders. For the investigation of tax returns and the collection of any delinquent taxes disclosed by such investigation, the Commissioner may, in lieu of the above per diem charge, assess against any such delinquent company the expense of the investigation and collection of such delinquent tax, a reasonable percentage of such delinquent tax, not to exceed ten per centum (10%) of such delinquency, and in addition thereto.

(1977, c. 376, s. 2; c. 802, s. 50.)

**Editor's Note.** — The first 1977 amendment repealed subdivision (2), which read: "To be paid to the publisher, for the publication of each financial statement, twelve dollars (\$12.00)." The second 1977 amendment rewrote the second sentence of subdivision (3).

Session Laws 1977, c. 802, s. 53, contains a severability clause.

As the other subdivisions were not changed by the amendments, they are not set out.

## SUBCHAPTER II. INSURANCE COMPANIES.

### ARTICLE 6.

#### *General Domestic Companies.*

**§ 58-72. Kinds of insurance authorized.** — The kinds of insurance which may be authorized in this State, subject to the other provisions of this Chapter, are set forth in the following paragraphs. Nothing herein contained shall require any insurer to insure every kind of risk which it is authorized to insure. The power to do any kind of insurance against loss of or damage to property shall include the power to insure all lawful interests in such property and to insure against loss of use and occupancy, rents and profits resulting therefrom; but no kind of insurance shall be deemed to include life insurance or insurance against legal liability for personal injury or death unless specified herein. In addition to any power to engage in any other kind of business than an insurance business which is specifically conferred by the provisions of this Chapter, any insurer authorized to do business in this State may engage in such other kind or kinds of business to the extent necessarily or properly incidental to the kind or kinds of insurance business which it is authorized to do in this State. Each of the following paragraphs indicates the scope of the kind of insurance business specified therein:

(15) "Workers' compensation and employer's liability insurance," meaning insurance against the legal liability, whether imposed by common law or by statute or assumed by contract, of any employer for the death or disablement of, or injury to, his or its employee.

(1979, c. 714, s. 2.)

#### **Editor's Note. —**

The 1979 amendment, effective July 1, 1979, substituted "Workers'" for "Workmen's" at the beginning of subdivision (15).

As the rest of the section was not changed by the amendment, only the introductory language and subdivision (15) are set out.

**Quoted in Hartford Accident & Indem. Co. v. Ingram, 290 N.C. 457, 226 S.E.2d 498 (1976).**

**§ 58-77. Amount of capital and/or surplus required; impairment of capital or surplus.** — The amount of capital and/or surplus requisite to the formation and organization of companies under the provisions of this Chapter shall be as follows:

#### (1) Stock Life Insurance Companies.

a. A stock corporation may be organized in the manner prescribed in this Chapter and licensed to do the business of life insurance, only when it shall have paid-in capital of at least six hundred thousand dollars (\$600,000) and a paid-in initial surplus of at least nine hundred thousand dollars (\$900,000), and it may in addition do the kind of business specified in subdivision (2) of G.S. 58-72 (annuities), without having additional capital or surplus. Every such company shall at all times thereafter maintain a minimum capital of not less than six hundred thousand dollars (\$600,000) and a minimum surplus of at least one hundred fifty thousand dollars (\$150,000). Provided that, any such corporation may do either or both of the kinds of insurance authorized for stock, accident and health insurance companies, as set out in paragraphs a. and b. of subdivision (3) of G.S. 58-72 (accidental death or personal injury,

and noncancelable disability), where its charter so permits, and when and so long as it meets and maintains a minimum capital and surplus equal to the sum of the minimum capital and surplus requirements of this subdivision (1)(a.) and the minimum capital and surplus requirements of subdivision (2)(a.) and/or (2)(b.) hereof as applicable.

- b. If the Commissioner, after such investigation as he may deem it expedient to make, finds that a corporation may be organized to do the business of life insurance, or the writing of annuities or both, that its operations are restricted solely to one state, and that the organization of such corporation is in the public interest, he may permit the organization of a stock corporation to do on such restricted plan either or both kinds of business specified in subdivisions (1) and (2) of G.S. 58-72 (life insurance and annuities), with the minimum paid-in capital and a minimum paid-in initial surplus in an amount to be prescribed by him, but in no event to be less than a paid-in capital of four hundred thousand dollars (\$400,000) and a paid-in surplus of six hundred thousand dollars (\$600,000). Every such company shall at all times thereafter maintain such prescribed minimum capital, or four hundred thousand dollars (\$400,000), whichever is greater and a minimum surplus of at least one hundred thousand dollars (\$100,000).
- (2) Stock Accident and Health Insurance Companies.  
a. A stock corporation may be organized in the manner prescribed in this Chapter and licensed to do only the kind of insurance specified in subdivision (3)a of G.S. 58-72 (accidental death or personal injury), when it shall have a paid-in capital of not less than four hundred thousand dollars (\$400,000), and a paid-in initial surplus of at least six hundred thousand dollars (\$600,000). Every such company shall at all times thereafter maintain a minimum capital of not less than four hundred thousand dollars (\$400,000) and a minimum surplus of at least one hundred thousand dollars (\$100,000).  
b. Any company organized under the provisions of paragraph a. of this subdivision may, by the provisions of its original charter or any amendment thereto, acquire the power to do the kind of business specified in paragraph b. of subdivision (3) of G.S. 58-72 (noncancelable disability insurance), if it has a paid-in capital of at least six hundred thousand dollars (\$600,000) and a paid-in initial surplus of at least nine hundred thousand dollars (\$900,000). Every such company shall at all times maintain a minimum capital of not less than six hundred thousand dollars (\$600,000) and a minimum surplus of at least one hundred fifty thousand dollars (\$150,000).
- (3) Stock Fire and Marine Companies. — A stock corporation may be organized in the manner prescribed in this Chapter and licensed to do one or more of the kinds of insurance specified in subdivisions (4), (5), (6), (7), (8), (11), (12), (19), (20), (21) and (22) of G.S. 58-72 only when it shall have a paid-in capital of not less than eight hundred thousand dollars (\$800,000) and a paid-in initial surplus of not less than one million two hundred thousand dollars (\$1,200,000). Every such company shall at all times thereafter maintain a minimum capital of not less than eight hundred thousand dollars (\$800,000) and a minimum surplus of at least two hundred thousand dollars (\$200,000). Provided that, any such corporation may do all the kinds of insurance authorized for casualty, fidelity and surety companies, as set out in subdivision (4) hereof where its charter so permits, and when and so long as it meets and thereafter maintains a minimum capital and surplus equal to the sum of the

minimum capital and surplus requirements of this subdivision (3) and the minimum capital and surplus requirements of subdivision (4) hereof.

(4) Stock Casualty and Fidelity and Surety Companies.

- a. A stock corporation may be organized in the manner prescribed in this Chapter and licensed to do one or more of the kinds of insurance specified in subdivisions (3), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), (19), (21) and (22) of G.S. 58-72 only when it shall have a paid-in capital of not less than one million dollars (\$1,000,000) and a paid-in initial surplus of not less than one million five hundred thousand dollars (\$1,500,000). Every such company shall at all times thereafter maintain a minimum capital of not less than one million dollars (\$1,000,000) and a minimum surplus of at least two hundred thousand dollars (\$250,000).
- b. If the Commissioner, after such investigation as he may deem it expedient to make, finds that a corporation may be organized to do one or more of such kinds of insurance, that its operations are restricted solely to one state, and that the organization of such corporation is in the public interest, he may permit such corporation to be organized and licensed to write the lines set out in subsection a. above with a paid-in capital of not less than six hundred thousand dollars (\$600,000) and a paid-in initial surplus of not less than nine hundred thousand dollars (\$900,000). Every such company shall hereafter maintain a minimum capital of not less than six hundred thousand dollars (\$600,000) and a minimum surplus of at least one hundred fifty thousand dollars (\$150,000). Provided that, any such casualty, fidelity and surety corporation may do all the kinds of insurance authorized for fire and marine companies, as set out in subdivision (3) hereof where its charter so permits, when and if it meets all additional requirements as to capital and surplus as fixed in said section, and maintains the same.

(5) Mutual Fire and Marine Companies.

- a. Limited assessment companies. — A limited assessment mutual company may be organized in the manner prescribed in this Chapter and licensed to do one or more kinds of insurance specified in subdivisions (4), (5), (6), (7), (8), (11), (12), (19), (20), (21) and (22) of G.S. 58-72 only when it has no less than five hundred thousand dollars (\$500,000) of insurance in not fewer than 500 separate risks subscribed with a paid-in initial surplus of at least three hundred thousand dollars (\$300,000), which surplus shall at all times be maintained. The assessment liability of a policyholder of a company organized in accordance with the provisions of this paragraph shall not be limited to less than five annual premiums provided, such limited assessment company may reduce the assessment liability of its policyholders from five annual premiums as set out herein to one additional annual premium when the free surplus of such company amounts to not less than three hundred thousand dollars (\$300,000), which surplus shall at all times be maintained.
- b. Assessable mutual companies. — An assessable mutual company may be organized in the manner prescribed in this Chapter and licensed to do one or more of the kinds of insurance specified in subdivisions (4), (5) and (6) of G.S. 58-72 (fire, miscellaneous property and water damage), with an unlimited assessment liability of its policyholders only when it shall have not less than five hundred thousand dollars (\$500,000) of insurance in not fewer than 500 separate risks subscribed with a paid-in initial surplus equal to twice the amount of the maximum net retained liability under the largest policy of insurance issued by such company; but not less

than sixty thousand dollars (\$60,000) which surplus shall at all times be maintained. Provided such company, when its charter so permits, in addition may be licensed to do one or more of the kinds of insurance specified in subdivisions (7), (8), (11), (12), (19), (20), (21) and (22) of G.S. 58-72, with an unlimited assessment liability of its policyholders, when its free surplus amounts to not less than sixty thousand dollars (\$60,000), which surplus shall at all times be maintained.

- c. Nonassessable mutual companies. — A nonassessable mutual company may be organized in the manner prescribed in this Chapter and licensed to do one or more of the kinds of insurance specified in subdivisions (4), (5), (6), (7), (8), (11), (12), (19), (20), (21) and (22) of G.S. 58-72 and may be authorized to issue policies under the terms of which a policyholder is not liable for any assessments in addition to the premium set out in the policy only when it shall have not less than five hundred thousand dollars (\$500,000) of insurance in not fewer than 500 separate risks subscribed with a paid-in initial surplus of not less than eight hundred thousand dollars (\$800,000), which surplus shall at all times be maintained.
- d. Town or county mutual insurance companies. — A town or county mutual insurance company with unlimited assessment liability may be organized in the manner prescribed in this Chapter and licensed to do the kinds of insurance specified in subdivision (4) of G.S. 58-72 (fire) only when it shall have not less than fifty thousand dollars (\$50,000) of insurance in not fewer than 50 separate risks subscribed with a paid-in initial surplus of not less than fifteen thousand dollars (\$15,000), which surplus shall at all times be maintained. A town or county mutual insurance company may, in addition to writing the business specified in subdivision (4) of G.S. 58-72 (fire insurance), cover in the same policy the hazards usually insured against under an extended coverage endorsement when such company has and at all times maintains in addition to the surplus hereinbefore required, an additional surplus of not less than twenty-five thousand dollars (\$25,000) or not less than an amount equivalent to one percent (1%) of the total amount of net retained insurance in force, whichever is the larger sum: Provided, that such company may not operate in more than three adjacent counties in this State.

- (6) Mutual Life, Accident and Health Insurance Companies. — A nonassessable mutual insurance company may be organized in the manner prescribed in this Chapter, and licensed to do only one or more of the kinds of insurance specified in subdivisions (1), (2) and (3) of G.S. 58-72 (life, annuities, and accident and health) when it has complied with the requirements of this Chapter and with those hereinafter set forth in paragraphs a. to d. of this subdivision, inclusive, whichever shall be applicable.

- a. If organized to do only the kinds of insurance specified in subdivisions (1) and (2) of G.S. 58-72 (life insurance and annuities), such company shall have not less than 500 bona fide applications for life insurance in an aggregate amount not less than five hundred thousand dollars (\$500,000), and shall have received from each such applicant in cash the full amount of one annual premium on the policy applied for by him, in an aggregate amount at least equal to ten thousand dollars (\$10,000), and shall in addition have a paid-in initial surplus of two hundred thousand dollars (\$200,000), and shall have and maintain at all times a minimum surplus of one hundred thousand dollars (\$100,000).

- b. If organized to do only the kind of insurance specified in paragraph a. of subdivision (3) of G.S. 58-72 (accidental death and personal injury), such company shall have not less than 250 bona fide applications for such insurance, and shall have received from each such applicant in cash the full amount of one annual premium on the policy applied for by him in an aggregate amount of at least ten thousand dollars (\$10,000), and shall have a paid-in initial surplus of two hundred thousand dollars (\$200,000) and shall have and maintain at all times a minimum surplus of one hundred thousand dollars (\$100,000).
- c. If organized to do the kinds of insurance specified in subdivision (1) and in paragraph a. of subdivision (3) of G.S. 58-72 (life insurance and accidental death and injury), such company shall have complied with the provisions of both paragraphs a. and b. hereof.
- d. If organized to do the kind of insurance specified in paragraph b. of subdivision (3) of G.S. 58-72 (noncancelable disability insurance), in addition to the kind or kinds of insurance designated in any one of the foregoing paragraphs of this subdivision, such company shall have a paid-in initial surplus of at least five hundred thousand dollars (\$500,000) and shall maintain a minimum surplus of at least three hundred thousand dollars (\$300,000).

(7) Organization of Mutual Casualty, Fidelity and Surety Companies.

- a. Nonassessable, mutual companies. — A mutual insurance company with no assessment liability provided for its policyholders may be organized in the manner prescribed in this Chapter and licensed to do one or more of the kinds of insurance specified in subdivisions (3), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), (19), (21) and (22) of G.S. 58-72 when it has a minimum paid-in initial surplus of one million dollars (\$1,000,000) and not less than five hundred thousand dollars (\$500,000) in insurance subscribed in not less than 500 separate risks. The surplus of such company shall at all times be maintained at or above the amount required hereinabove for organization of such company.
- b. Assessable mutual companies. — A mutual insurance company with assessment liability provided for its policyholders may be organized in the manner prescribed in this Chapter and licensed to do one or more of the kinds of insurance specified in subdivisions (3), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), (19), (21) and (22) of G.S. 58-72 when it has a minimum paid-in initial surplus of four hundred thousand dollars (\$400,000) and not less than five hundred thousand dollars (\$500,000) of insurance subscribed in not less than 500 separate risks. Such company shall at all times maintain a surplus in an amount not less than four hundred thousand dollars (\$400,000). The assessment liability of a policyholder of such company shall not be limited to less than one annual premium.

(8) Organization of Mutual Multiple Line Companies.

- a. Assessable mutual companies. — A company may do all the kinds of insurance authorized to be done by a company organized under the provisions of paragraph a. of subdivision (5) hereof (limited assessment mutual fire and marine companies), and paragraph b. of subdivision (7) hereof (assessable mutual casualty, fidelity and surety companies), where its charter so permits when and if it meets the combined minimum requirements of said paragraphs. The assessment liability of policyholders of such a company shall not be limited to less than one annual premium within any one policy year.

- b. Nonassessable mutual companies. — A company may do all the kinds of insurance authorized to be done by a company organized under the provisions of paragraph c. of subdivision (5) hereof (nonassessable mutual fire and marine companies), and paragraph a. of subdivision (7) hereof (nonassessable mutual casualty, fidelity and surety companies), where its charter so permits when and if it meets the combined minimum requirements of said paragraphs. The policyholders of such a company shall not be subject to any assessment liability.
- (9) Time for Compliance. — Any domestic, foreign or alien company licensed to do business in North Carolina prior to July 1, 1979, shall be permitted to continue to do the same kinds of business which it was authorized to do on such date without being required to increase its capital and/or surplus, provided however, such insurers shall increase the capital and surplus requirements to the amounts set forth in this section G.S. 58-77 on or before July 1, 1983, but the requirements of this section as to capital and surplus shall apply to such companies as a prerequisite to writing additional lines of business, and to such companies as a prerequisite to commencing business if unlicensed prior to July 1, 1979.
- (10) Impairment of Capital and/or Surplus. — Whenever the Commissioner finds from a financial statement made by any such company, or from a report of examination of any such company, that its admitted assets are less than the aggregate amount of its liabilities and its outstanding capital stock and/or required minimum surplus, he shall determine the amount of such impairment of capital and/or surplus and issue an order in writing requiring the company to eliminate the impairment within such period of not more than 90 days as he shall designate. The Commissioner may, by order served upon the company, prohibit the company from issuing any new policies while such impairment exists. If at the expiration of the designated period the company has not satisfied the Commissioner that the impairment has been eliminated, an order for the rehabilitation or liquidation of the company may be entered as provided in Article 17A, Chapter 58 of the General Statutes of North Carolina. (1899, c. 54, s. 26; 1903, c. 438, s. 4; Rev., s. 4729; 1907, c. 1000, s. 5; 1913, c. 140, s. 2; C. S., s. 6332; 1929, c. 284, s. 1; 1945, c. 386; 1947, c. 721; 1963, c. 943; 1965, c. 947; 1967, c. 300; 1971, c. 536; 1973, c. 686; 1979, c. 421, s. 1.)

**Editor's Note. —**

The 1979 amendment, effective July 1, 1979, rewrote this section.

Session Laws 1979, c. 421, s. 2, contains a severability clause.

**§ 58-79. Investments; life.** — (a) Investments Specified. — Every domestic stock and mutual life insurance company must have and continually keep to the extent of an amount equal to its entire reserves, as hereinafter defined, an entire capital, if any, and minimum required surplus, invested in:

- (1) Coin or currency of the United States of America, on hand or on deposit in a national or state bank or trust company or invested in the shares of any building and loan or savings and loan association, or invested in the shares of any federal savings and loan association.
- (2) Interest-bearing bonds, notes, certificates of indebtedness, bills or other direct interest-bearing obligations of the United States of America or of the Dominion of Canada or other interest-bearing obligations fully guaranteed both as to principal and interest by the United States of America, or by the Dominion of Canada.

- (3) Interest-bearing bonds of any state, District of Columbia, territory or possession of the United States of America, or of any province of the Dominion of Canada, or of any county, or incorporated city of any state, District of Columbia, territory or possession of the United States of America.
- (4) Interest-bearing bonds of any commission, authority or political subdivision having legal authority to issue the same of any state, District of Columbia, territory or possession of the United States of America or of any county or incorporated city of any state, District of Columbia, territory or possession of the United States of America.
- (5) Federal farm loan bonds issued by federal land banks organized under the provisions of the act of Congress known as the Federal Farm Loan Act. Any notes, bonds, debentures, or similar type obligations, consolidated or otherwise, issued by any farm credit institution pursuant to authorities contained in the Farm Credit Act of 1971 (Public Law 92-181), as amended. Interest-bearing bonds, notes or other interest-bearing obligations of any solvent corporation organized under the laws of the United States of America or of the Dominion of Canada, or under the laws of any state, District of Columbia, territory or possession of the United States of America, or obligations issued, assumed or guaranteed by the International Bank for Reconstruction and Development, Asian Development Bank and Inter-American Development Bank. Equipment trusts obligations or certificates or other secured instruments evidencing an interest in transportation equipment wholly or in part within the United States of America and a right to receive determined portions of rental, purchases or other fixed obligatory payments for the use or purchase of such transportation equipment.
- (6) Dividend-paying stocks or shares of any corporation created or existing under the laws of the United States of America or of any state, District of Columbia, territory or possession of the United States of America; notwithstanding any provisions in this section to the contrary no company may invest more than ten percent (10%) of its total admitted assets in common stocks; and further provided, that no company may invest more than three percent (3%) of its admitted assets in the stock or shares of any one corporation, and provided further, except as the Commissioner shall permit, that such investment in any one corporation not engaged solely in the business of insurance shall not result in the acquisition of more than twenty percent (20%) of the outstanding voting stock or shares of such corporation. The restrictions in this section do not apply to shares of building and loan or savings and loan associations or federal savings and loan associations.
- (7) Loans secured by first mortgages, or deeds of trust, on unencumbered fee simple or improved leasehold real estate in the District of Columbia or in any state, territory or possession of the United States of America, to an amount not exceeding seventy-five percent (75%) of the fair market value of such fee simple or improved leasehold real estate; provided that such loans may exceed seventy-five percent (75%) of the fair market value of such fee simple or improved leasehold real estate to the extent that an admitted mortgage guaranty insurer, as defined in G.S. 58-72(17), has insured or guaranteed or made a commitment to insure or guarantee the amount by which such loan is in excess of seventy-five percent (75%) of the fair market value; provided, further, that, in no event shall any such loan exceed ninety-five percent (95%) of the fair market value of the property. No loan may be made on leasehold real estate unless the lease has at least 30 years to run before its termination and the loan matures at least 20 years before expiration

of the lease. Whenever such loans are made upon fee simple, or improved leasehold real estate which is improved by a building or buildings, the said improvements shall be insured against loss by fire, and the fire insurance policies shall contain a standard mortgage clause and shall be delivered to the mortgagee as additional security for the said loan.

Loans secured by first mortgages which the Federal Housing Administrator has insured or has made a commitment to insure, or invested in mortgage notes or bonds so insured, and neither the limitations of this section nor any other law of this State requiring security upon which loans shall be made, or prescribing the nature, amount or forms of such security, or limiting the interest rates upon loans, shall be deemed to apply to such insured mortgage loans.

Loans secured by first mortgages, or deeds of trust, on unencumbered fee simple real estate in connection with which the Veterans Administration of the United States has guaranteed, or has made a commitment to guarantee, a portion of the loan pursuant to the Servicemen's Readjustment Act of 1944, and amendments thereto, provided the amount of any such loan, less the portion thereof guaranteed by said Veterans Administration, shall not exceed seventy-five percent (75%) of the fair market value of such real estate.

In all investments made upon mortgages, the evidence of the debt, if any, shall accompany the mortgage or deed of trust.

- (8) Ground rents in the District of Columbia or any state of the United States of America, provided, that in the case of unexpired redeemable ground rents the premiums paid, if any, shall be amortized over the period between date of acquisition and earliest redemption date or charged off at any time prior to redemption date; and in the case of expired redeemable ground rents the premium paid, if any, shall be charged off at the time of acquisition. Redeemable ground rents purchased at a discount shall be carried at an amount not greater than the cost of acquisition.
- (9) Collateral loans secured by pledge of any security named in subdivisions (1), (2), (3), (4), (5), (6), (7) and (8) of this subsection; provided that the current market value of such pledged securities shall be at all times during the continuance of such loans at least twenty-five percent (25%) more than the unpaid balance of the amount loaned on them.
- (10) Loans upon the policies of the company; provided that the total indebtedness against any policy shall not be greater than the loan value of such policy.
- (11) No domestic company may directly or indirectly acquire or hold real property except as follows:
  - a. Such land and buildings thereon in which it has its principal office and such real estate as shall be requisite for the convenient transaction of its own business; the amount invested in such real property shall not exceed ten per centum (10%) of the investing company's admitted assets, but the Commissioner may grant permission to the company to invest in real property for such purpose in such increased amount as he may deem proper upon a hearing held before him.
  - b. Property mortgaged to it in good faith as security for loans previously contracted for money due.
  - c. Property conveyed to it in satisfaction of debts previously contracted in the course of its dealings, or purchased at sales upon judgments, decrees, or mortgages obtained or made for such debts.
  - d. Additional real property and equipment incident to real property, if necessary or convenient for the purpose of enhancing the sale

value of real property previously acquired or held by it under paragraphs b. and c. of this subdivision and subject to the prior written approval of the Commissioner.

- e. 1. Real estate acquired for the purpose of leasing the same to any person, firm, or corporation, or real estate already leased under the following conditions:
  - I. A. Where there has already been erected on said property a building or other improvements satisfactory to the purchaser, or
  - B. Where the lessee shall at its own cost erect thereon, free of liens, a building or other improvements satisfactory to the lessor, or
  - C. Where the lessor under the terms and conditions of a lease executed and entered into simultaneously with the purchase of the property agrees to erect a building or other improvements on said property;
- II. That the said improvements shall remain on the said property during the period of the lease, and in cases where the said improvements are put upon said property at the cost of the lessee the said improvements at the termination of the lease shall vest, free of liens, in the owner of the real estate;
- III. That during the term of the lease the tenant shall keep and maintain the said improvements in good repair. Real estate acquired pursuant to the provisions of this subparagraph (a)(11)e1 shall not be treated as an admitted asset unless and until the improvements herein required shall have been constructed and the lease agreement entered into in accordance with the terms of this subparagraph, nor shall real estate acquired pursuant to this subparagraph (a)(11)e1 be treated as an admitted asset in an amount exceeding the amount actually invested reduced each year by at least two percent (2%) of the investment allocable to the improvements on such real estate. The total investments of any company under this subparagraph (a)(11)e1 shall not exceed six percent (6%) of its assets, nor more than fifty percent (50%) of its capital and surplus whichever is less.
2. Subject to approval of the Commissioner, real estate for recreation, hospitalization, convalescent and retirement purposes of its employees. Such investment under this subparagraph (a)(11)e2 shall not exceed five percent (5%) of the company's surplus.
3. Subject to the approval of the Commissioner, real estate for public or private housing developments. Such investment under this subparagraph (a)(11)e3 shall be subject to and not exceed the limitation provided for in the last sentence of subparagraph (a)(11)e1 III hereof.
4. No investment shall be made by any company pursuant to this paragraph e which will cause such company's investment in all real property owned or held by it directly or indirectly to exceed ten percent (10%) of its assets.
- f. It is unlawful for any such incorporated company to purchase or hold real estate in any other case or for any other purpose. Real estate acquired under paragraph (a)(11)a and subparagraph (a)(11)e2 of this section which has ceased to be used or to be necessary for the

purposes stated therein shall be sold within five years thereafter, unless the company procures a certificate from the Commissioner that the interest of the company will materially suffer by a forced sale of such real estate in which event the time for the sale may be extended to such a time as the Commissioner may direct in the certificate. Any real estate acquired under paragraphs b, c, and d of this subdivision (11) shall be sold within five years after the company has acquired title thereto; provided, that the Commissioner may in his discretion extend the five-year period as provided hereinabove. Any real estate acquired under subparagraph (a)(11)e1 of this section shall within five years after the termination or expiration of such lease be sold or released for an additional term pursuant to the provisions of subparagraph (a)(11)e1; provided, that the Commissioner may in his discretion extend the five-year period as provided hereinabove. Nothing contained herein prevents any insurance company from improving or conveying its real estate, notwithstanding the lapse of five years without having procured such certificate from the Commissioner.

- (12) Electronic and mechanical machines constituting a data processing and accounting system if the cost of such system is at least twenty-five thousand dollars (\$25,000), but not more than two percent (2%) of its admitted assets, which cost shall be amortized in full over a period not to exceed 10 calendar years.
- (13) Interest, rents or other fixed income due and accrued on any of the investments named in subdivisions (1), (2), (3), (4), (5), (7), (8), (9), (10) and (11) of this subsection pursuant to regulations promulgated by the Commissioner.
- (14) Notwithstanding any expressed or implied prohibitions, a company may, after the date of the enactment of this subdivision, invest in investments which do not otherwise qualify under any other provision of this subsection; provided, however, that the investments authorized by this subdivision shall not exceed the lesser of (i) five percent (5%) of its admitted assets or (ii) the amount by which total admitted assets exceed total liabilities (except capital) plus six hundred thousand dollars (\$600,000) as shown on its last annual statement preceding the date of the acquisition of such investment as filed with the Commissioner of Insurance.
- (15) To the extent necessary to satisfy the investment requirements as to reserves and entire capital, if any, and minimum required surplus, no company shall make any investment in or loan on any of the securities mentioned in this section, which are in default as to principal or interest or as to which the dividend on the last preceding dividend date has been passed.

(1979, c. 777.)

**Editor's Note. —**

The 1979 amendment added the two provisos at the end of the first sentence of the first paragraph of subdivision (7) of subsection (a).

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

### § 58-79.1. Investments; fire, casualty and miscellaneous.

**There is no requirement in this section that insurance companies invest in risk-free ventures; rather, the statute provides that insurance companies may engage in a variety of**

investments. *State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau*, 40 N.C. App. 85, 252 S.E.2d 811 (1979).

## § 58-79.2. Establishment of separate accounts by life insurance companies.

(s) Except for G.S. 58-201.3 and 58-207 in the case of a variable annuity contract and G.S. 58-201.2, 58-207, and 58-211(1) in the case of a variable life insurance policy and except as otherwise provided in this section, all pertinent provisions of the insurance laws of this State shall apply to separate accounts and contracts issued in connection therewith. Any individual variable life insurance contract, delivered or issued for delivery within this State, shall contain reinstatement and nonforfeiture provisions appropriate to such a contract. Any group variable life insurance contract, delivered or issued for delivery within this State, shall contain grace provisions appropriate to such a contract. Any individual variable annuity contract, delivered or issued for delivery within this State, shall contain reinstatement provisions appropriate to such a contract. (1965, c. 166; 1969, c. 616, s. 2; 1971, c. 831, s. 2; 1973, c. 490; 1979, c. 409, s. 10.)

### **Editor's Note. —**

The 1979 amendment inserted "G.S. 58-201.3 and" near the beginning of the first sentence of subsection (s).

As only subsection (s) was changed by the amendment, the rest of this section is not set out.

## ARTICLE 6A.

### *Exchange of Stock.*

## § 58-86.3. Exchange of securities.

**Proper for Insurance Company to Have Holding Company Structure.** — By enacting this article the General Assembly has recognized, and in so doing has established as the public policy of this State, that it is entirely proper for a domestic insurance company and its

stockholders to enjoy the benefits of a corporate reorganization so as to bring their company under a holding company structure, provided the protective procedures prescribed in the article are followed. Occidental Life Ins. Co. v. Ingram, 34 N.C. App. 619, 240 S.E.2d 460 (1977).

## § 58-86.4. Procedure for exchange.

**Notice and Hearing Required.** — Because there may be circumstances in which a corporate reorganization might work to the detriment of the domestic insurance company or its shareholders or policyholders, this section provides that the corporate reorganization can be accomplished only after notice is given to all shareholders and to the public of a public hearing which the Commissioner of Insurance is directed to hold. Occidental Life Ins. Co. v. Ingram, 34 N.C. App. 619, 240 S.E.2d 460 (1977).

**Commissioner Must Act in Good Faith.** — A clearly implied condition upon the powers conferred upon the Commissioner by this section is that he will exercise them in good faith. Occidental Life Ins. Co. v. Ingram, 34 N.C. App. 619, 240 S.E.2d 460 (1977).

**And Not Arbitrarily.** — The powers conferred upon the Commissioner of Insurance by this section are not so broad as to permit him

arbitrarily to refuse to make findings favorable to petitioners when all of the evidence supports such findings and there is no competent evidence to the contrary. Occidental Life Ins. Co. v. Ingram, 34 N.C. App. 619, 240 S.E.2d 460 (1977).

The Commissioner of Insurance abused the powers granted to him by the General Assembly when he arbitrarily and capriciously denied a domestic insurance company's plan to reorganize under a holding company structure where all of the competent evidence showed they were clearly entitled to reorganization. Occidental Life Ins. Co. v. Ingram, 34 N.C. App. 619, 240 S.E.2d 460 (1977).

If the Commissioner acts arbitrarily, petitioners are not left helpless, nor are the courts powerless to grant them adequate relief. Occidental Life Ins. Co. v. Ingram, 34 N.C. App. 619, 240 S.E.2d 460 (1977).

**Issuance of Mandatory Injunction Requiring Commissioner to Act.** — The trial court did not exceed its power and authority by issuing its mandatory injunction requiring the Commissioner of Insurance to approve a domestic insurance corporation's plan to

reorganize under a holding company structure where the Commissioner acted arbitrarily and capriciously when he disapproved the plan. Occidental Life Ins. Co. v. Ingram, 34 N.C. App. 619, 240 S.E.2d 460 (1977).

## ARTICLE 12A

### *Insurer Holding Registration and Disclosure Act.*

**§ 58-124.12 to 58-124.16:** Reserved for future codification purposes.

## ARTICLE 12B.

### *North Carolina Rate Bureau.*

(This Article expires September 1, 1980.)

**§ 58-124.17. North Carolina Rate Bureau created.** — There is hereby created a bureau to be known as the "North Carolina Rate Bureau," with the following objects and functions:

- (1) To assume the functions formerly performed by the North Carolina Rating Bureau, the North Carolina Automobile Rate Administrative Office, and the Compensation Rating and Inspection Bureau of North Carolina, with regard to the promulgation of rates, for insurance against loss to residential real property with not more than four housing units located in this State and any contents thereof and valuable interest therein and other insurance coverages written in connection with the sale of such property insurance; for theft of and physical damage to private passenger (nonfleet) motor vehicles as the same are defined under Article 13C of this Chapter; for liability insurance for such motor vehicles, automobile medical payments insurance, uninsured motorists coverage and other insurance coverages written in connection with the sale of such liability insurance; and for workers' compensation and employers' liability insurance written in connection therewith.
- (2) The Bureau shall provide reasonable means to be approved by the Commissioner whereby any person affected by a rate made by it may be heard in person or by his authorized representative before the governing committee or other proper executive of the Bureau.
- (3) The Bureau shall have the duty and responsibility of promulgating and proposing rates for insurance against loss to residential real property with not more than four housing units located in this State and any contents thereof or valuable interest therein and other insurance coverages written in connection with the sale of such property insurance; for insurance against theft of or physical damage to private passenger (nonfleet) motor vehicles; for liability insurance for such motor vehicles, automobile medical payments insurance, uninsured motorists coverage and other insurance coverages written in connection with the sale of such liability insurance; and for workers' compensation and employers' liability insurance written in connection therewith. The provisions of this subdivision shall not apply to motor vehicles operated under certificates of authority from the Utilities Commission, the Interstate Commerce Commission, or their successor

agencies, where insurance or other proof of financial responsibility is required by law or by regulations specifically applicable to such certificated vehicles.

- (4) Agreements may be made between or among members with respect to equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to but who are unable to procure such insurance through ordinary methods. The members may agree between or among themselves on the use of reasonable rate modifications for such insurance, agreements, and rate modifications to be subject to the approval of the Commissioner.
- (5) It shall be the duty of all insurers underwriting workers' compensation insurance in this State and being members of the Bureau, as defined in this section and G.S. 58-124.18 to insure and accept any workers' compensation insurance risk which shall have been certified to be "difficult to place" by any fire and casualty insurance agent licensed in this State. When any such risk is called to the attention of the North Carolina Rate Bureau and it appears that said risk is in good faith entitled to such coverage, the Bureau shall fix the initial premium therefor, (subject to the approval of the Insurance Commissioner), and upon its payment said Bureau shall designate a member whose duty it shall be to issue a standard workers' compensation policy of insurance containing the usual and customary provisions found in such policies therefor. Upon receipt of the required premium at the office of the Bureau during regular working hours the Bureau shall instruct the designated carrier to issue its policy of insurance to become effective as of 12:01 a.m. the following day, and the carrier shall be so bound; provided, that the carrier may request of the Bureau a certificate of the Department of Labor that the insured is complying with the laws, rules and regulations of that Department. Said certificate shall be furnished within 30 days by the Department of Labor, unless extension of time is granted by agreement between the Bureau and the Department of Labor. The Bureau shall make and adopt such rules as may be necessary to carry this section into effect, subject to final approval of the Insurance Commissioner. As a prerequisite to the transaction of worker's compensation insurance in this State every member of said Bureau writing such insurance shall file with the Insurance Commissioner written authority permitting said Bureau to act in its behalf as provided in this section, and an agreement to accept such risks as are assigned to said insurance by said Bureau, as provided in this section. (1977, c. 828, s. 6.)

**Cross Reference.** — As to the regulation of insurance rates, see § 58-131.34 et seq.

**Editor's Note.** — Session Laws 1977, c. 828, s. 25, as amended by Session Laws 1979, c. 824, s. 8, provides: "This act shall become effective September 1, 1977, and shall not affect any existing policy during the existing term of said policy." Prior to the 1979 amendment, Session Laws 1977, c. 828, s. 25, provided: "This act shall become effective September 1, 1977, and will expire September 1, 1980, and shall not affect any existing policy during the existing term of said policy."

Session Laws 1977, c. 828, s. 24, contains a severability clause.

For a survey of 1977 law on insurance, see 56 N.C.L. Rev. 1084 (1978).

**Legislative Intent.** — It was the legislative intent in enacting Article 12B of Chapter 58 to eliminate unfair and unnecessary delay in the rate-making process. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 40 N.C. App. 85, 252 S.E.2d 811 (1979).

**The Bureau is not a State agency.** State ex rel. Commissioner of Ins. v. North Carolina Fire Ins. Rating Bureau, 292 N.C. 471, 234 S.E.2d 720 (1977).

**The Bureau is to be regarded as if it were the only insurance company operating in North Carolina,** for rate-making purposes, and as if it had an earned premium experience, an incurred loss experience and an operating expense experience equivalent to the composite of those of the companies actually in operation. State ex

rel. Commissioner of Ins. v. North Carolina Fire Ins. Rating Bureau, 291 N.C. 55, 229 S.E.2d 268 (1976).

For rate-making purposes, the Bureau is treated as if it were the only insurance company writing policies upon the risks over which it has jurisdiction. The Bureau is regarded as having an earned premium experience, an incurred loss

experience and an operating expense experience equivalent to the composite of all those companies over which it has jurisdiction. This is proper since all companies writing policies covering the risks over which the Bureau has jurisdiction are members of the Bureau. Foremost Ins. Co. v. Ingram, 292 N.C. 244, 232 S.E.2d 414 (1977).

**§ 58-124.18. Membership as a prerequisite for writing insurance; governing committee; rules and regulations; expenses.** — (a) Before the Commissioner of Insurance shall grant permission to any stock, nonstock, or reciprocal insurance company or any other insurance organization to write in this State insurance against loss to residential real property with not more than four housing units located in this State or any contents thereof or valuable interest therein or other insurance coverages written in connection with the sale of such property insurance; or insurance against theft of or physical damage to private passenger (nonfleet) motor vehicles; or liability insurance for such motor vehicles, automobile medical payments insurance, uninsured motorists coverage or other insurance coverage written in connection with the sale of such liability insurance; or workers' compensation and employers' liability insurance written in connection therewith; it shall be a requisite that they shall subscribe to and become members of the Bureau.

(b) Each member of the Bureau writing any one or more of the above lines of insurance in North Carolina shall, as a requisite thereto, be represented in the Bureau and shall be entitled to one representative and one vote in the administration of the affairs of the Bureau. They shall, upon organization, elect a governing committee which governing committee shall be composed of equal representation by stock and nonstock members.

(c) The Bureau, when created, shall adopt such rules and regulations for its orderly procedure as shall be necessary for its maintenance and operation. No such rules and regulations shall discriminate against any type of insurer because of its plan of operation, nor shall any insurer be prevented from returning any unused or unabsorbed premium, deposit, savings or earnings to its policyholders or subscribers. The expense of such Bureau shall be borne by its members by quarterly contributions to be made in advance, such contributions to be made in advance by prorating such expense among the members in accordance with the amount of gross premiums derived from the above lines of insurance in North Carolina during the preceding year and members entering the Bureau since that date to advance an amount to be fixed by the governing committee. After the first fiscal year of operation of the Bureau the necessary expense of the Bureau shall be advanced by the members in accordance with rules and regulations to be established and adopted by the governing committee. The Bureau shall be empowered to subscribe for or purchase any necessary service, and employ and fix the salaries of such personnel and assistants as are necessary.

(d) The Commissioner of Insurance is hereby authorized to compel the production of all books, data, papers and records and any other data necessary to compile statistics for the purpose of determining the underwriting experience of lines of insurance referred to in this Article, and this information shall be available and for the use of the Bureau for the capitulation and promulgation of rates on lines of insurance as are subject to the rate-making authority of the Bureau. (1977, c. 828, s. 6.)

**Membership Required.** — Every company engaged in the writing of fire insurance policies, including extended coverage endorsements attached thereto, is required to be a member of

the bureau. State ex rel. Commissioner of Ins. v. North Carolina Fire Ins. Rating Bureau, 291 N.C. 55, 229 S.E.2d 268 (1976).

**Applied** in State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 40 N.C. App. 85, 252 S.E.2d 811 (1979).

**§ 58-124.19. Method of rate making; factors considered.** — The following standards shall apply to the making and use of rates:

- (1) Rates shall not be excessive, inadequate or unfairly discriminatory.
- (2) Due consideration shall be given to actual loss and expense experience within this State for the most recent three-year period for which such information is available; to prospective loss and expense experience within this State; to the hazards of conflagration and catastrophe; to a reasonable margin for underwriting profit and to contingencies; to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers; to investment income earned or realized by insurers from their unearned premium, loss, and loss expense reserve funds generated from business within this State; to past and prospective expenses specially applicable to this State; and to all other relevant factors within this State; Provided, however, that countrywide expense and loss experience and other countrywide data may be considered only where credible North Carolina experience or data is not available.
- (3) In the case of fire insurance rates, as are subject to the rate-making authority of the Bureau, consideration may be given to the experience of such fire insurance business during the most recent five-year period for which such experience is available.
- (4) Risks may be grouped by classifications and lines of insurance for establishment of rates and base premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions or both. Such standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses. The Bureau is directed to establish and implement a comprehensive classification rating plan for motor vehicle insurance under its jurisdiction within 90 days of September 1, 1977. No such classification plans shall base any standard or rating plan for private passenger (nonfleet) motor vehicles, in whole or in part, directly or indirectly, upon the age or sex of the persons insured. The Bureau shall at least once every three years make a complete review of the filed classification rates to determine whether they are proper and supported by statistical evidence. (1977, c. 828, s. 6; 1979, c. 824, s. 1.)

**Editor's Note.** The 1979 amendment, effective June 30, 1979, inserted "to actual loss and expense experience within this State for the most recent three-year period for which such information is available" and substituted "to prospective loss and expense experience" for "to past and prospective loss experience" near the beginning of subdivision (2), inserted "to investment income earned or realized by insurers from their unearned premium, loss, and loss expense reserve funds generated from business within this State" near the middle of subdivision (2), and deleted "including judgment factors, deemed relevant" following "and to all other relevant factors" and substituted "may" for "shall" near the end of subdivision (2).

Session Laws 1979, c. 824, s. 9, contains a severability clause.

Session Laws 1979, c. 824, s. 10, provides: "This act will not affect any policy in existence on the effective date of this act."

Session Laws 1979, c. 824, s. 11, provides: "This act will not affect pending litigation."

**There is no requirement that the Rate Bureau must always use the same rate-making formulas.** State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 40 N.C. App. 85, 252 S.E.2d 811 (1979).

**The prohibition against discrimination in rates** is directed to insurers, agents, brokers and other representatives of insurers. Hyde Ins. Agency, Inc. v. Dixie Leasing Corp., 26 N.C. App. 138, 215 S.E.2d 162 (1975).

**The ultimate question for the Commissioner's determination** is whether the proposed rates will, after provision for reasonably anticipated losses and operating expenses, leave for the insurers (considered as if the Bureau were a single company with the composite experience of all companies issuing homeowners insurance in North Carolina) a fair and reasonable profit and no more. State ex rel. Commissioner of Ins. v. North Carolina Fire Ins. Rating Bureau, 292 N.C. 471, 234 S.E.2d 720 (1977).

What rates are necessary to entitle the companies to earn a fair and reasonable profit, and no more, cannot be determined without specific findings of fact, upon substantial evidence, as to (1) the reasonably anticipated loss experience during the life of the policies to be issued in the near future, (2) the reasonably anticipated operating expenses in the same period, and (3) the percent of earned premiums which will constitute a fair and reasonable profit in that period. State ex rel. Commissioner of Ins. v. North Carolina Fire Ins. Rating Bureau, 292 N.C. 471, 234 S.E.2d 720 (1977).

**Review of Workers' Compensation Rate-Making.** — For a review of the statutory scheme for workers' compensation rate-making, see State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 40 N.C. App. 85, 252 S.E.2d 811 (1979).

In a workers' compensation rate hearing, the Commissioner of Insurance could properly

consider investment income in determining whether a certain margin for underwriting was reasonable; however, the Commissioner erred in requiring the investment income to be considered at a risk-free rate of return rather than the rate of return actually experienced by the companies, since such requirement would limit the range of investments by insurance companies contrary to the provisions of § 58-79.1. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 40 N.C. App. 85, 252 S.E.2d 811 (1979).

**Competent Evidence.** — In a proceeding initiated by the Commissioner to consider the propriety of a reduction in the premium rate because of excessive profits accruing to the companies under existing rates, surely figures taken from the companies' reports to him would qualify as competent evidence of the "experience of the fire insurance business" within the meaning of this section and could be given "consideration" by him. It is equally competent in consideration of a filing by the Bureau. State ex rel. Commissioner of Ins. v. North Carolina Fire Ins. Rating Bureau, 292 N.C. 471, 234 S.E.2d 720 (1977).

**Data Filing Not in Violation of Section.** — Where countrywide data was used only to supplement the North Carolina evidence, the filing was not in violation of this section. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 40 N.C. App. 85, 252 S.E.2d 811 (1979).

**§ 58-124.20. Filing rates, plans with Commissioner; public inspection of filings.** — (a) The Bureau shall file with the Commissioner copies of the rates, classification plans, rating plans and rating systems used by its members. Each filing shall become effective immediately on the date specified therein but not earlier than 90 days from the date such filing is received by the Commissioner.

(b) A filing shall be open to public inspection immediately upon submission to the Commissioner.

(c) The Bureau shall maintain reasonable records, of the type and kind reasonably adapted to its method of operation, of the experience of its members and of the data, statistics or information collected or used by it in connection with the rates, rating plans, rating systems, underwriting rules, policy or bond forms, surveys or inspections made or used by it.

(d) On or before July 1 of each calendar year the Bureau shall submit to the Commissioner for the motor vehicle liability insurance subject to the provisions of this Article the experience, data, statistics, and information referred to in subsection (c) of this section and a rate review based on such data.

- (e) The Commissioner may require the filing of supporting data including:
- (1) The Bureau's interpretation of any statistical data relied upon;
  - (2) Descriptions of the methods employed in setting the rates;
  - (3) Analysis of the incurred losses submitted on an accident year or policy year basis into their component parts; to wit, paid losses, reserves for losses and loss expenses, and reserves for losses incurred but not reported;
  - (4) The total number and dollar amount of paid claims;

- (5) The total number and dollar amount of case basis reserve claims;
- (6) Earned and written premiums at current rates by rating territory;
- (7) Earned premiums and incurred losses according to classification plan categories; and
- (8) Income from investment of unearned premiums and loss and loss expense reserves generated by business within this State.

Provided, however, that with respect to business written prior to January 1, 1980, the Commissioner shall not require the filing of such supporting data which has not been required to be recorded under statistical plans approved by the Commissioner. (1977, c. 828, s. 6; 1979, c. 824, s. 2.)

**Editor's Note.** — The 1979 amendment, effective June 30, 1979, added subsection (e).

Session Laws 1979, c. 824, s. 9, contains a severability clause.

Session Laws 1979, c. 824, s. 10, provides: "This act will not affect any policy in existence on the effective date of this act."

Session Laws 1979, c. 824, s. 11, provides: "This act will not affect pending litigation."

**Filing to Comply with Statutory Standards.**

— If the Commissioner fails to perform the affirmative duties imposed upon him by Article 12B of Chapter 58 after a filing by the Rate Bureau, the filing shall be deemed to be approved, just as there is a deemed approval upon his failure to give notice of hearing within 30 days under § 58-124.21(b). If the Court of Appeals, on appeal from the Commissioner's order of disapproval, finds that the order is not supported by material and substantial evidence, it is then the duty of the court to determine whether the filing complies with the statutory standards and methods and is supported by substantial evidence. If no such compliance is found the disapproval order will be vacated and the filing approved, and this will constitute a final determination under § 58-124.22, which will require an order distributing the escrowed funds to the members of the Rate Bureau. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 40 N.C. App. 85, 252 S.E.2d 811 (1979).

**Filing May Be Withdrawn.** — Nothing in this section relating to filings by the Bureau supports the contention that a filing, once made, cannot be withdrawn for any reason satisfactory to the Bureau. In this respect, there is no basis for making a distinction between a filing which

proposes an increase in the premium rate and a filing which proposes a decrease in such rate. State ex rel. Commissioner of Ins. v. North Carolina Fire Ins. Rating Bureau, 291 N.C. 55, 229 S.E.2d 268 (1976).

**And Amended.** — When the Bureau makes a filing in which it proposes an increase in the premium rates, unquestionably, the Bureau may amend its filing so as to propose a smaller increase in premium rates than that proposed in the original filing. State ex rel. Commissioner of Ins. v. North Carolina Fire Ins. Rating Bureau, 291 N.C. 55, 229 S.E.2d 268 (1976).

**The Commissioner can no longer effectively disapprove a rate filing by inaction or a bare assertion** that the Rate Bureau has not carried its burden of proof. Though the new statutory scheme does not shift the ultimate burden of proof from the Rate Bureau to the Commissioner, it does place on the Commissioner, in disapproving a filing, the burden of affirmatively and specifically showing how the Bureau has not carried its burden of proof, and, if the Commissioner fails to do so by substantial evidence, the presumption of *prima facie* correctness given to an order of the Commissioner by §§ 58-9.4 and 58-9.6 is rebutted. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 40 N.C. App. 85, 252 S.E.2d 811 (1979).

**Review of Workers' Compensation Rate-Making.** — For a review of the statutory scheme for workers' compensation rate-making, see State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 40 N.C. App. 85, 252 S.E.2d 811 (1979).

**§ 58-124.21. Disapproval; hearing, order; adjustment of premium, review of filing.** — (a) At any time within 30 days from and after the date of any filing, the Commissioner may give written notice to the Bureau specifying in what respect and to what extent he contends such filing fails to comply with the requirements of this Article and fixing a date for hearing not less than 30 days from the date of mailing of such notice. At such hearing the factors specified in G.S. 58-124.19 shall be considered. If the Commissioner after hearing finds that the filing does not comply with the provisions of this Article, he may issue his order determining wherein and to what extent such filing is deemed to be improper and fixing a date thereafter, within a reasonable time, after which such

filing shall no longer be effective. Any order of disapproval under this section must be entered within 90 days of the date such filing is received by the Commissioner.

(b) In the event that no notice of hearing shall be issued within 30 days from the date of any such filing, the filing shall be deemed to be approved. If the Commissioner disapproves such filing pursuant to subsection (a) as not being in compliance with G.S. 58-124.19, he may order an adjustment of the premium to be made with the policyholder either by collection of an additional premium or by refund, if the amount exceeds five dollars (\$5.00). The Commissioner may thereafter review any filing in the manner provided; but if so reviewed, no adjustment of any premium on any policy then in force may be ordered. (1977, c. 828, s. 6; 1979, c. 824, s. 3.)

**Editor's Note.** — The 1979 amendment, effective June 30, 1979, in subsection (b) substituted "by collection of an additional premium or by refund, if the amount exceeds five dollars (\$5.00)" for "by refund or collection of additional premium, if the amount is substantial and equals or exceeds the cost of making the adjustment" at the end of the second sentence, and deleted "such" following "may thereafter review any" and substituted "of any premium on any policy then in force" for "of premium" in the last sentence.

Session Laws 1979, c. 824, s. 9, contains a severability clause.

Session Laws 1979, c. 824, s. 10, provides: "This act will not affect any policy in existence on the effective date of this act."

Session Laws 1979, c. 824, s. 11, provides: "This act will not affect pending litigation."

**Purpose of Hearing.** — "The purpose of the hearing before the Commissioner is to determine whether the proposed rates are unreasonable, excessive or discriminatory. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 40 N.C. App. 85, 252 S.E.2d 811 (1979).

**For rate-making purposes, the Bureau is to be regarded as if it were the only insurance company operating in North Carolina and as if it had an earned premium experience, an incurred loss experience and an operating experience equivalent to the composite of those of the companies actually in operation. State ex rel. Commissioner of Ins. v. North Carolina Fire Ins. Rating Bureau, 292 N.C. 471, 234 S.E.2d 720 (1977).**

**Compliance with Statutory Procedures and Standards.** — The Commissioner of Insurance has no authority to prescribe or regulate premium rates except insofar as that authority has been conferred upon him by statute. In exercising that authority he must comply with the statutory procedures and standards. State ex rel. Commissioner of Ins. v. North Carolina Fire Ins. Rating Bureau, 291 N.C. 55, 229 S.E.2d 268 (1976).

**The Commissioner is not required to approve or disapprove the filing in toto but may approve it in part.** State ex rel.

Commissioner of Ins. v. North Carolina Fire Ins. Rating Bureau, 292 N.C. 471, 234 S.E.2d 720 (1977).

**Basis for Disapproval.** — The fact that the Commissioner personally disapproves of a proposed rate revision does not, standing alone, warrant disapproval of the filing. The Commissioner's disapproval must be based on an affirmative showing that the proposed filing (1) fails to comply with statutory standards or (2) is not supported by substantial evidence, or both. State ex rel. Commissioner of Ins. v. North Carolina Fire Ins. Rating Bureau, 30 N.C. App. 487, 228 S.E.2d 261 (1976), aff'd in part, rev'd in part, 292 N.C. 70, 231 S.E.2d 882 (1977).

The Commissioner's disapproval must be based on an affirmative showing that the proposed filing fails to comply with statutory standards. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 40 N.C. App. 85, 252 S.E.2d 811 (1979).

The Commissioner can no longer effectively disapprove a rate filing by inaction or a bare assertion that the Rate Bureau has not carried its burden of proof. Though the new statutory scheme does not shift the ultimate burden of proof from the Rate Bureau to the Commissioner, it does place on the Commissioner, in disapproving a filing, the burden of affirmatively and specifically showing how the bureau has not carried its burden of proof, and, if the Commissioner fails to do so by substantial evidence, the presumption of prima facie correctness given to an order of the Commissioner by §§ 58-9.4 and 58-9.6 is rebutted. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 40 N.C. App. 85, 252 S.E.2d 811 (1979).

**When Public Hearing Required.** — Approval or disapproval of the Commissioner under former § 58-131.1 necessarily contemplates action by the Commissioner, and a public hearing under § 58-27.2 is required prior to such action upon a proposed material rate change. State ex rel. Commissioner of Ins. v. North Carolina Fire Ins. Rating Bureau, 292 N.C. 70, 231 S.E.2d 882 (1977).

**Credibility of Evidence.** — The credibility of evidence, whether offered by the Bureau, the Department of Insurance or a protestant, and the weight to be given such evidence, are to be determined by the Commissioner. However, in this determination, as in other aspects of such rate-making proceeding, the Commissioner may not act arbitrarily, rejecting as untrustworthy, for no stated or apparent reason, uncontradicted testimony or data submitted through competent and unimpeached witnesses. State ex rel. Commissioner of Ins. v. North Carolina Fire Ins. Rating Bureau, 292 N.C. 471, 234 S.E.2d 720 (1977).

The Commissioner may not reject as untrustworthy evidence that is uncontradicted or unimpeached. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 40 N.C. App. 85, 252 S.E.2d 811 (1979).

**Review of Commissioner's Action.** — If the Commissioner fails to perform the affirmative duties imposed upon him by Article 12B of Chapter 58 after a filing by the Rate Bureau, the filing shall be deemed to be approved, just as there is a deemed approval upon his failure to give notice of hearing within 30 days under § 58-124.21(b). If the Court of Appeals, on appeal from the Commissioner's order of disapproval, finds that the order is not supported by material and substantial evidence, it is then the duty of the court to determine whether the filing complies with the statutory standards and methods and is supported by substantial

evidence. If no such compliance is found the disapproval order will be vacated and the filing approved, and this will constitute a final determination under § 58-124.22, which will require an order distributing the escrowed funds to the members of the Rate Bureau. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 40 N.C. App. 85, 252 S.E.2d 811 (1979).

**Review of Workers' Compensation Rate-Making.** — For a review of the statutory scheme for workers' compensation rate-making, see State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 40 N.C. App. 85, 252 S.E.2d 811 (1979).

In a workers' compensation rate hearing, the Commissioner of Insurance could properly consider investment income in determining whether a certain margin for underwriting was reasonable; however, the Commissioner erred in requiring the investment income to be considered at a risk-free rate of return rather than the rate of return actually experienced by the companies, since such requirement would limit the range of investments by insurance companies contrary to the provisions of § 58-79.1. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 40 N.C. App. 85, 252 S.E.2d 811 (1979).

Cited in State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 294 N.C. 60, 241 S.E.2d 324 (1978).

### § 58-124.22. Appeal of Commissioner's order. — (a) Any order or decision of the Commissioner shall be subject to judicial review as provided in Article 2 of this Chapter.

(b) Whenever a Bureau rate is held to be unfairly discriminatory or excessive and no longer effective by order of the Commissioner issued under G.S. 58-124.21, the members of the Bureau, in accordance with rules and regulations established and adopted by the governing committee, shall have the option to continue to use such rate for the interim period pending judicial review of such order, provided each such member shall place in escrow account the purportedly unfairly discriminatory or excessive portion of the premium collected during such interim period and the court, upon a final determination, shall order the escrowed funds to be distributed appropriately, except that individual refunds that are five dollars (\$5.00) or less shall not be required. The court may also require that purportedly excess premiums resulting from an adjustment of premiums ordered pursuant to G.S. 58-124.21(b) be placed in such escrow account pending judicial review. The amounts escrowed hereunder shall bear interest at the prime rate as of the date such rates were put into effect. (1977, c. 828, s. 6; 1979, c. 824, s. 4.)

**Editor's Note.** — The 1979 amendment, effective June 30, 1979, in subsection (b) inserted "in accordance with rules and regulations established and adopted by the governing committee" near the beginning of the first sentence, inserted "individual" preceding "refunds" and substituted "five dollars (\$5.00)

or less" for "de minimis" near the end of the first sentence, and deleted "but in no event, less than the legal rate, from the date of the Commissioner's order relating thereto" at the end of the last sentence.

Session Laws 1979, c. 824, s. 9, contains a severability clause.

Session Laws 1979, c. 824, s. 10, provides: "This act will not affect any policy in existence on the effective date of this act."

Session Laws 1979, c. 824, s. 11, provides: "This act will not affect pending litigation."

**Review of Commissioner's Action.** — If the Commissioner fails to perform the affirmative duties imposed upon him by Article 12B of Chapter 58 after a filing by the Rate Bureau, the filing shall be deemed to be approved, just as there is a deemed approval upon his failure to give notice of hearing within 30 days under § 58-124.21(b). If the Court of Appeals, on appeal from the Commissioner's order of disapproval, finds that the order is not supported by material and substantial evidence, it is then the duty of the court to determine whether the filing complies with the statutory standards and methods and is supported by substantial evidence. If no such compliance is found the disapproval order will be vacated and the filing

approved, and this will constitute a final determination under § 58-124.22, which will require an order distributing the escrowed funds to the members of the Rate Bureau. State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 40 N.C. App. 85, 252 S.E.2d 811 (1979).

**Neither the Court of Appeals nor the Supreme Court has the inherent power to fix rates of insurance premiums** nor to continue them in effect pending a hearing on remand. State ex rel. Commissioner of Ins. v. North Carolina Fire Ins. Rating Bureau, 292 N.C. 471, 234 S.E.2d 720 (1977).

**Review of Workers' Compensation Rate-Making.** — For a review of the statutory scheme for workers' compensation rate-making, see State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau, 40 N.C. App. 85, 252 S.E.2d 811 (1979).

**§ 58-124.23. Deviations.** — (a) No insurer, officer, agent or representative thereof shall knowingly issue or deliver or knowingly permit the issuance or delivery of any policy of insurance in this State which does not conform to the rates, rating plans, classifications, schedules, rules and standards made and filed by the Bureau. However, an insurer may deviate from the rates promulgated by the Bureau provided the insurer has filed the deviation to be applied both with the Bureau and the Commissioner, and provided the said deviation is uniform in its application to all risks in the State of the class to which such deviation is to apply; and provided such deviation is approved by the Commissioner. The Commissioner shall approve proposed deviations if the same do not render the rates excessive, inadequate or unfairly discriminatory. If approved the deviation shall remain in force for a period of one year from the date of approval by the Commissioner. Such deviation may be renewed annually subject to all of the foregoing provisions. Those portions of this section providing for deviations shall not apply to workers' compensation and employers' liability insurance written in connection therewith.

(b) A rate in excess of that promulgated by the Bureau may be charged on any specific risk provided such higher rate is charged with the approval of the Commissioner and with the knowledge and written consent of the insured. (1977, s. 828, s. 6.)

**§ 58-124.24. Appeal to Commissioner from decision of Bureau.** — Any member of the Bureau may appeal to the Commissioner from any decision of the Bureau and the Commissioner shall, after a hearing held on not less than 10 days' written notice to the appellant and to the Bureau, issue an order approving the decision of the Bureau or directing it to give further consideration to such proposal. In the event the Bureau fails to take satisfactory action, the Commissioner shall make such order as he may see fit. (1977, c. 828, s. 6.)

**§ 58-124.25. Existing rates, rating systems, territories, classifications and policy forms.** — Rates, rating systems, territories, classifications and policy forms lawfully in use on September 1, 1977, may continue to be used thereafter, notwithstanding any provision of this Article. (1977, c. 828, s. 6.)

**§ 58-124.26. Cap on insurance rate increases.** — Notwithstanding any other provision of this Article or Chapter, and with respect to the lines of insurance

subject to this Article, neither the Rate Bureau nor any member thereof nor the Motor Vehicle Reinsurance Facility shall increase the general rate level for any such line by more than six percent (6%) per annum from the general rate level existing on the effective date of this section: Provided, that the provisions of this section with respect to workers' compensation insurance and employers' liability insurance written in connection therewith shall expire on July 1, 1980; provided further, that the provisions of this section with respect to the remaining lines of insurance subject to this Article shall expire on July 1, 1981. (1977, c. 828, s. 6; 1979, c. 824, s. 5.)

**Editor's Note.** — The 1979 amendment, effective June 30, 1979, rewrote this section.

Session Laws 1979, c. 824, s. 9, contains a severability clause.

Session Laws 1979, c. 824, s. 10, provides: "This act will not affect policy in existence on the effective date of this act."

Session Laws 1979, c. 824, s. 11, provides: "This act will not affect pending litigation."

**§ 58-124.27. Notice of coverage or rate change.** — Whenever an insurer changes the coverage other than at the request of the insured or changes the premium rate, it shall give the insured written notice of such coverage change or premium rate change at least 15 days in advance of the effective date of such change or changes with a copy of such notice to the agent. This section shall apply to all policies and coverages subject to the provisions of this Article. (1977, c. 828, s. 6.)

**§ 58-124.28. Limitation.** — Nothing in this Article shall apply to any town or county farmers mutual fire insurance association restricting their operations to not more than three adjacent counties, or to domestic insurance companies, associations, orders or fraternal benefit societies now doing business in this State on the assessment plan. (1977, c. 828, s. 6.)

**§ 58-124.29. Policy forms.** — No policy form applying to insurance on risks or operations covered by this Article may be delivered or issued for delivery unless it has been filed with the Commissioner by the Bureau and either he has approved it, or 90 days have elapsed and he has not disapproved it. (1979, c. 824, s. 6.)

**Editor's Note.** — Session Laws 1979, c. 824, s. 12, makes the act effective June 30, 1979.

Session Laws 1979, c. 824, s. 9, contains a severability clause.

Session Laws 1979, c. 824, s. 10, provides: "This act will not affect any policy in existence on the effective date of this act."

Session Laws 1979, c. 824, s. 11, provides: "This act will not affect pending litigation."

**§ 58-124.30. Payment of dividends not prohibited or regulated; plan for payment into rating system.** — Nothing in this Article will be construed to prohibit or regulate the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers. A plan for the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers will not be deemed a rating plan or system. (1979, c. 824, s. 6.)

**Editor's Note.** — Session Laws 1979, c. 824, s. 12, makes the act effective June 30, 1979.

Session Laws 1979, c. 824, s. 9, contains a severability clause.

Session Laws 1979, c. 824, s. 10, provides: "This act will not affect any policy in existence on the effective date of this act."

Session Laws 1979, c. 824, s. 11, provides: "This act will not affect pending litigation."

## ARTICLE 13.

### *Fire Insurance Rating Bureau.*

**§§ 58-125 to 58-131.9:** Repealed by Session Laws 1977, c. 828, s. 1, effective September 1, 1977.

**Cross References.** — As to the North Carolina Rate Bureau, see § 58-124.17 et seq. As to the regulation of insurance rates, see § 58-131.34 et seq.

**Editor's Note.** — Session Laws 1977, c. 828, s. 25, as amended by Session Laws 1979, c. 824, s. 8, provides: "This act shall become effective September 1, 1977, and shall not affect any

existing policy during the existing term of said policy." Prior to the 1979 amendment, Session Laws 1977, c. 828, s. 25, provided: "This act shall become effective September 1, 1977, and will expire September 1, 1980, and shall not affect any existing policy during the existing term of said policy."

## ARTICLE 13A.

### *Casualty Insurance Rating Regulations.*

**§§ 58-131.10 to 58-131.25:** Repealed by Session Laws 1977, c. 828, s. 1, effective September 1, 1977.

**Cross References.** — As to the North Carolina Rate Bureau, see § 58-124.17 et seq. As to the regulation of insurance rates, see § 58-131.34 et seq.

**Editor's Note.** — Session Laws 1977, c. 828, s. 25, as amended by Session Laws 1979, c. 824, s. 8, provides: "This act shall become effective September 1, 1977, and shall not affect any

existing policy during the existing term of said policy." Prior to the 1979 amendment, Session Laws 1977, c. 828, s. 25, provided: "This act shall become effective September 1, 1977, and will expire September 1, 1980, and shall not affect any existing policy during the existing term of said policy."

## ARTICLE 13B.

### *Rate Regulation of Miscellaneous Lines.*

**§§ 58-131.26 to 58-131.33:** Repealed by Session Laws 1977, c. 828, s. 1, effective September 1, 1977.

**Cross References.** — As to the North Carolina Rate Bureau, see § 58-124.17 et seq. As to the regulation of insurance rates, see § 58-131.34 et seq.

**Editor's Note.** — Session Laws 1977, c. 828, s. 25, as amended by Session Laws 1979, c. 824, s. 8, provides: "This act shall become effective September 1, 1977, and shall not affect any

existing policy during the existing term of said policy." Prior to the 1979 amendment, Session Laws 1977, c. 828, s. 25, provided: "This act shall become effective September 1, 1977, and will expire September 1, 1980, and shall not affect any existing policy during the existing term of said policy."

## ARTICLE 13C.

*Regulation of Insurance Rates.***§ 58-131.34. Purposes.** — The purposes of this Article are

- (1) To promote the public welfare by regulating rates to the end that they shall not be excessive, inadequate, or unfairly discriminatory;
  - (2) To authorize the existence and operation of qualified rating organizations and advisory organizations and require that specified rating services of such rating organizations be generally available to all admitted insurers;
  - (3) To encourage, as the most effective way to produce rates that conform to the standards of subsection (1) of this section, independent action by and reasonable price competition among insurers;
  - (4) To authorize cooperative action among insurers in the rate-making process, and to regulate such cooperation in order to prevent practices that tend to bring about monopoly or to lessen or destroy competition; and
  - (5) To encourage the most efficient and economic marketing practices.
- (1977, c. 828, s. 2.)

**Cross Reference.** — As to the North Carolina Rate Bureau, see § 58-124.17 et seq.

**Editor's Note.** — Session Laws 1977, c. 828, s. 25, as amended by Session Laws 1979, c. 824, s. 8, provides: "This act shall become effective September 1, 1977, and shall not affect any existing policy during the existing term of said policy." Prior to the 1979 amendment, Session Laws 1977, c. 828, s. 25, provided: "This act shall become effective September 1, 1977, and will expire September 1, 1980, and shall not affect

any existing policy during the existing term of said policy."

Session Laws 1977, c. 828, s. 24, contains a severability clause.

For a survey of 1977 law on insurance, see 56 N.C.L. Rev. 1084 (1978).

The prohibition against discrimination in rates is directed to insurers, agents, brokers and other representatives of insurers. Hyde Ins. Agency, Inc. v. Dixie Leasing Corp., 26 N.C. App. 138, 215 S.E.2d 162 (1975).

**§ 58-131.35. Definitions.** — As used in this Article:

- (1) "Advisory organization" means every person, other than an admitted insurer, whether located within or outside this State, who prepares policy forms or makes underwriting rules incident to but not including the making of rates, or rating plans or rating systems, or which collects and furnishes to admitted insurers or rating organizations loss or expense statistics or other statistical information and data and acts in an advisory, as distinguished from a rate-making, capacity. No duly authorized attorney-at-law acting in the usual course of his profession shall be deemed to be an advisory organization.
- (2) "Commissioner" means the Commissioner of Insurance.
- (3) "Inland marine insurance" shall be deemed to include insurance now or hereafter defined by statute, or by interpretation thereof, or if not so defined or interpreted, by ruling of the Commissioner or as established by general custom of the business, as inland marine insurance.
- (4) "Member," unless otherwise apparent from the context, means an insurer who participates in or is entitled to participate in the management of a rating, advisory or other organization.
- (5) "Rating organization" means every person, other than an admitted insurer, whether located within or outside this State, who has as his object or purpose the making of rates, rating plans, or rating systems. Two or more insurers which act in concert for the purpose of making rates, rating plans, or rating systems, and which do not operate within

- the specific authorizations contained in G.S. 58-131.45, 58-131.46, 58-131.47 and 58-131.48, shall be deemed to be a rating organization. No single insurer shall be deemed to be a rating organization.
- (6) "Subscriber," unless otherwise apparent from the context, means an insurer which is furnished at its request (i) with rates and rating manuals by a rating organization of which it is not a member, or (ii) with advisory services by an advisory organization of which it is not a member.
- (7) "Willful" means in relation to an act or omission which constitutes a violation of this Article with actual knowledge or belief that such act or omission constitutes such violation and with specific intent to commit such violation.
- (8) "Private passenger motor vehicle" means:
- a motor vehicle of the private passenger or station wagon type that is owned or hired under a long-term contract by the policy named insured and that is neither used as a public or livery conveyance for passengers nor rented to others without a driver; or
  - A motor vehicle with a pick-up body, a delivery sedan or a panel truck that is owned by an individual or by husband and wife or individuals who are residents of the same household and that is not customarily used in the occupation, profession, or business of the insured other than farming or ranching. Such vehicles owned by a family farm copartnership or corporation shall be considered owned by an individual for purposes of this Article; or
  - A motorcycle, motorized scooter or other similar motorized vehicle not used for commercial purposes.
- (9) "Nonfleet" motor vehicle means a motor vehicle not eligible for classification as a fleet vehicle for the reason that the motor vehicle is one of four or less motor vehicles owned or hired under a long-term contract by the policy named insured. (1977, c. 828, s. 2.)

**Quoted** in State ex rel. Commissioner of Ins.  
v. North Carolina Auto. Rate Administrative  
Office, 294 N.C. 60, 241 S.E.2d 324 (1978).

**§ 58-131.36. Scope of application.** — The provisions of this Article shall apply to all insurance on risks or on operations in this State, except:

- Reinsurance, other than joint reinsurance to the extent stated in G.S. 58-131.45;
- Any policy of insurance against loss or damage to or legal liability in connection with property located outside this State, or any motor vehicle or aircraft principally garaged and used outside of this State, or any activity wholly carried on outside this State;
- Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies;
- Accident, health, or life insurance;
- Annuities;
- Title insurance;
- Mortgage guaranty insurance;
- Workers' compensation and employers' liability insurance written in connection therewith;
- For private passenger (nonfleet) motor vehicle liability insurance, automobile medical payments insurance, uninsured motorists' coverage and other insurance coverages written in connection with the sale of such liability insurance;

- (10) Theft of or physical damage to private passenger (nonfleet) motor vehicles; and
- (11) Insurance against loss to residential real property with not more than four housing units located in this State or any contents thereof or valuable interest therein and other insurance coverages written in connection with the sale of such property insurance.

The provisions of this Article shall not apply to hospital service or medical service corporations, investment companies, mutual benefit associations, or fraternal beneficiary associations. (1977, c. 828, s. 2; 1979, c. 714, s. 2.)

**Editor's Note.** — The 1979 amendment, for "Workmen's" at the beginning of effective July 1, 1979, substituted "Workers'" subdivision (8).

**§ 58-131.37. Rate standards.** — (a) Rates shall not be excessive, inadequate, or unfairly discriminatory.

(b) Rates are not excessive if a reasonable degree of price competition exists at the consumer level with respect to the class of business to which they apply. It is presumed that a reasonable degree of price competition exists if there are a number of insurers actively engaged in the class of business and there are rate differentials in that class of business.

(c) If such competition does not exist, rates are excessive if they clearly produce a long-run underwriting profit that is unreasonably high for the class of business.

(d) No rate shall be held to be inadequate unless (i) the rate is unreasonably low for the insurance provided and the continued use of the rate endangers the solvency of the insurer, or unless (ii) the rate is unreasonably low for the insurance provided and the use of the rate by the insurer has, or if continued will have, the effect of destroying competition or creating a monopoly.

(e) A rate is not unfairly discriminatory in relation to another in the same class if it reflects equitably the differences in expected losses and expenses. Rates are not unfairly discriminatory because different premiums result for policyholders with like loss exposures but different expense factors, or like expense factors but different loss exposures, as long as the rates reflect the differences with reasonable accuracy. Rates are not unfairly discriminatory if they are averaged broadly among persons insured under a group, franchise, or blanket policy. (1977, c. 828, s. 2.)

**§ 58-131.38. Rating methods.** — In determining whether rates comply with the standards under G.S. 58-131.37, the following criteria shall be applied:

- (1) Due consideration shall be given to past and prospective loss and expense experience within this State, to catastrophe hazards, to a reasonable margin for underwriting profit and contingencies, to trends within this State, to dividends or savings to be allowed or returned by insurers to their policyholders, members, or subscribers, and to all other relevant factors, including judgment factors; provided, however, that countrywide expense and loss experience and other countrywide data shall be considered where credible North Carolina experience or data is not available.
- (2) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among risks that have probable effect upon losses or expenses. Classifications or modifications of classifications of risks may be established based upon size, expense, management, individual

experience, location or dispersion of hazard, or any other reasonable considerations. Such classifications and modifications shall apply to all risks under the same or substantially the same circumstances or conditions.

- (3) The expense provisions included in the rates to be used by an insurer may reflect the operating methods of the insurer and, as far as it is credible, its own expense experience. (1977, c. 828, s. 2.)

**This section contemplates a trending method** which, on the basis of trends in past loss experience, projects the losses to be anticipated during the future period in which the proposed rates will be in effect. State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 292 N.C. 1, 231 S.E.2d 867 (1977).

**Consideration of Past Experience.** — It is apparent that when a filing is made the

ratemaker must, of necessity, estimate what will happen in the future. The natural guide is past experience and this section specifically provides for consideration of factors relating to past experience. State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 292 N.C. 1, 231 S.E.2d 867 (1977).

**§ 58-131.39. Filing of rates and supporting data.** — (a) Except as to inland marine risks which by general custom of the business are not written according to manual rates and rating plans, every admitted insurer and every licensed rating organization, which has been designated by any insurer for the filing of rates under G.S. 58-131.41, shall file with the Commissioner all rates and all changes and amendments thereto made by it for use in this State prior to the time they become effective.

- (b) The Commissioner may require the filing of supporting data including:
- (1) The experience and judgment of the filer, and to the extent the filer wishes or the Commissioner requires, of other insurers or rating organizations;
  - (2) The filer's interpretation of any statistical data relied upon; and
  - (3) Descriptions of the methods employed in setting the rates.

(c) Upon written consent of the insured, stating his reasons therefor, a rate or deductible or both in excess of that provided by an otherwise applicable filing may be used on a specific risk, provided that it is filed with the Commissioner in accordance with subsection (a) of this section. (1977, c. 828, s. 2.)

**§ 58-131.40. Filing open to inspection.** — Each filing and supporting data filed under this Article shall, as soon as filed, be open to public inspection at any reasonable time. Copies may be obtained by any person on request and upon payment of a reasonable charge therefor. (1977, c. 828, s. 2.)

**§ 58-131.41. Delegation of rate making and rate filing obligation.** — (a) An insurer may itself establish rates based on the factors in G.S. 58-131.38 or it may use rates prepared by a rating organization, with average expense factors determined by the rating organization or with such modification for its own expense and loss experience as the credibility of that experience allows.

(b) An insurer may discharge its obligation under G.S. 58-131.39 by giving notice to the Commissioner that it uses rates prepared by a designated rating organization, with such information about modifications thereof as are necessary to fully inform the Commissioner. The insurer's rates shall be those filed from time to time by the rating organization, including any amendments thereto as filed, subject, however, to the modifications filed by the insurer. (1977, c. 828, s. 2.)

**§ 58-131.42. Disapproval of rates; interim use of rates.** — (a) If the Commissioner finds after a hearing that a rate is not in compliance with G.S. 58-131.37, he shall issue an order specifying in what respects it so fails, and stating when, following a reasonable period thereafter, the rate shall be deemed no longer effective. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

(b) Whenever a rate of an insurer is held to be unfairly discriminatory or excessive and the rate is deemed no longer effective by order of the Commissioner issued under subsection (a) of this section, the insurer shall have the option to continue to use the rate for the interim period pending judicial review of the order, provided that the insurer shall place in an escrow account approved by the Commissioner the purported unfairly discriminatory or excessive portion of the premium collected during the interim period. The court, upon a final determination, shall order the escrowed funds or any overcharge in the interim rates to be distributed appropriately, except that refunds to policyholders that are de minimis shall not be required. (1977, c. 828, s. 2.)

**The Rate Office and the Commissioner possess only such respective powers as are granted by the General Assembly.** State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 292 N.C. 1, 231 S.E.2d 867 (1977).

**Approval of Proposals.** — The Commissioner has duty to consider rate proposals in accordance with standards contained in this

section and has no authority merely to accept a proposal as being true and accurate for purposes of entering an interim order. State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 287 N.C. 192, 214 S.E.2d 98 (1975).

**Quoted in State ex rel. Commissioner of Ins. v. North Carolina Auto. Rate Administrative Office, 294 N.C. 60, 241 S.E.2d 324 (1978).**

**§ 58-131.43. Rating organizations.** — (a) No rating organization shall provide any service relating to rates subject to this Article and no insurer shall utilize the service of such organization for such purpose unless the organization has obtained a license from the Commissioner.

(b) No rating organization shall refuse to supply any services for which it is licensed in this State to any insurer admitted to do business in this State and offering to pay the fair and usual compensation for the services.

(c) A rating organization applying for a license shall include with its application:

- (1) A copy of its constitution, charter, articles of organization, agreement, association, or incorporation, and a copy of its bylaws, plan of operation, and any other rules or regulations governing the conduct of its business;
- (2) A list of its members and subscribers;
- (3) The name and address of one or more residents of this State upon whom notices, process affecting it, or orders of the Commissioner may be served;
- (4) A statement showing its technical qualifications for acting in the capacity for which it seeks a license; and
- (5) Any other relevant information and documents that the Commissioner may require.

(d) If the Commissioner finds that the applicant and the natural persons through whom it acts are qualified to provide the services proposed, and that all requirements of law are met, he shall issue a license specifying the authorized activity of the applicant. He shall not issue a license if the proposed activity would tend to create a monopoly or to lessen or to destroy price competition. Licenses issued pursuant to this section shall remain in effect until the licensee withdraws from the State or until the license is suspended or revoked.

(e) Any change in or amendment to any document required to be filed under this section shall be promptly filed with the Commissioner.

(f) Every rating organization providing services in this State on September 1, 1977, may continue to provide services thereafter as a rating organization, subject to the provisions of this Article and pending its application to the Commissioner for a license to provide services as a rating organization, which application shall be made within 30 days after September 1, 1977. (1977, c. 828, s. 2.)

**§ 58-131.44. Advisory organizations.** — (a) No advisory organization shall conduct its operations in this State unless and until it has filed with the Commissioner:

- (1) A copy of its constitution, articles of incorporation, agreement, or association, and of its bylaws, or rules and regulations governing its activities, all duly certified by the custodian of the originals thereof;
  - (2) A list of its members and subscribers; and
  - (3) The name and address of a resident of this State upon whom notices, process affecting it, or orders of the Commissioner may be served.
- (b) Any change in or amendment to any document required to be filed under this section shall be promptly filed with the Commissioner.
- (c) No advisory organization shall engage in any unfair or unreasonable practice with respect to its activities. (1977, c. 828, s. 2.)

**§ 58-131.45. Joint underwriting and joint reinsurance organizations.** — (a) Every group, association, or other organization of insurers which engages in joint underwriting or joint reinsurance through such group, association, or organization, or by standing agreement among the members thereof, shall file with the Commissioner:

- (1) A copy of its constitution, articles of incorporation, agreement, or association, and bylaws;
  - (2) A list of its members; and
  - (3) The name and address of a resident of this State upon whom notices, process affecting it, or orders of the Commissioner may be served.
- (b) Any change in or amendment to any document required to be filed under this section shall be promptly filed with the Commissioner.
- (c) If after a hearing, the Commissioner finds that any activity or practice of any such group, association, or other organization is unfair, unreasonable, or otherwise inconsistent with the provisions of this Article, he may issue a written order specifying in what respects the activity or practice is unfair, unreasonable, or otherwise inconsistent with the provisions of this Article, and requiring the discontinuance of the activity or practice. (1977, c. 828, s. 2.)

**§ 58-131.46. Insurers authorized to act in concert.** — Subject to and in compliance with the provisions of this Chapter authorizing insurers to be members or subscribers of rating or advisory organizations or to engage in joint underwriting or joint reinsurance, two or more insurers may act in concert with each other and with others with respect to any matters pertaining to the making of rates or rating systems, the preparation or making of insurance policy or bond forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss or expense statistics or other information and data, or carrying on research. (1977, c. 828, s. 2.)

**§ 58-131.47. Insurers authorized to act in concert; admitted insurers with common ownership or management; matters relating to co-surety bonds.** — With respect to any matters pertaining to the making of rates or rating systems, the preparation or making of insurance policy or bond forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss or expense statistics or other information and data, or carrying on research, two or more

admitted insurers having a common ownership or operating in this State under common management or control, are hereby authorized to act in concert between or among themselves the same as if they constituted a single insurer. To the extent that such matters relate to co-surety bonds, two or more admitted insurers executing co-surety bonds are authorized to act in concert between or among themselves the same as if they constituted a single insurer. (1977, c. 828, s. 2.)

**§ 58-131.48. Agreements to adhere.** — No insurer shall assume any obligation to any person, other than a policyholder or other insurers with which it is under common control or management or is a member of a joint underwriting or joint reinsurance organization, to use or adhere to certain rates or rules; and no other person shall impose any penalty or other adverse consequence for failure of an insurer to adhere to certain rates or rules. This section shall not apply to apportionment agreements among insurers approved by the Commissioner pursuant to G.S. 58-131.52. Provided, however, that members and subscribers of rating or advisory organizations may use the rates, rating systems, underwriting rules, or policy or bond forms of such organizations either consistently or intermittently. The fact that two or more admitted insurers, whether or not members or subscribers of a rating or advisory organization, consistently or intermittently use the rates or rating systems made or adopted by a rating organization, or the underwriting rules or policy or bond forms prepared by a rating or advisory organization, shall not be sufficient in itself to support a finding that an agreement to so adhere exists, and it may be used only for the purpose of supplementing or explaining direct evidence of the existence of any such agreement. (1977, c. 828, s. 2.)

**§ 58-131.49. Exchange of information or experience data; consultation with rating organizations and insurers.** — Rating organizations licensed pursuant to G.S. 58-131.43 and admitted insurers are authorized to exchange information and experience data between and among themselves in this State and with rating organizations and insurers in other states and may consult with them with respect to rate making and the application of rating systems. (1977, c. 828, s. 2.)

**§ 58-131.50. Recording and reporting of experience.** — The Commissioner shall promulgate or approve reasonable rules, including rules providing statistical plans, for use thereafter by all insurers in the recording and reporting of loss and expense experience, in order that the experience of such insurers may be made available to him. No insurer shall be required to record or report its experience on a classification basis inconsistent with its own rating system. The Commissioner may designate one or more rating organizations to assist him in gathering and making compilations of such experience. (1977, c. 828, s. 2.)

**§ 58-131.51. Examination of rating, joint underwriting, and joint reinsurance organizations.** — The Commissioner shall, at least once every three years, make or cause to be made an examination of each rating organization licensed pursuant to G.S. 58-131.43 and each advisory organization licensed pursuant to G.S. 58-131.44. He may, as often as he may deem it expedient, make or cause to be made, an examination of each group, association, or other organization referred to in G.S. 58-131.45. Such examination shall relate only to the activities conducted pursuant to this Article and to the organizations licensed under this Article. The reasonable cost of any such examination shall be paid by the organization examined upon presentation to it of a detailed account of such cost. The officers, manager, agents and employees of any such organization may be examined at any time under oath and shall exhibit all books,

records, account, documents or agreements governing its method of operation. In lieu of any such examination, the Commissioner may accept the report of an examination made by the insurance advisory official of another state, pursuant to the laws of such state. (1977, c. 828, s. 2.)

**§ 58-131.52. Apportionment agreements among insurers.** — Agreements may be made between or among insurers with respect to equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to but who are unable to procure such insurance through ordinary methods. The insurers may agree between or among themselves on the use of reasonable rate modifications for such insurance, agreements, and rate modifications to be subject to the approval of the Commissioner. (1977, c. 828, s. 2.)

**§ 58-131.53. Request for review of rate, rating plan, rating system or underwriting rule.** — Any person aggrieved by any rate charged, rating plan, rating system, or underwriting rule followed or adopted by an insurer or rating organization may request the insurer or rating organization to review the manner in which the rate, plan, system, or rule has been applied with respect to insurance afforded him. Such request may be made by his authorized representative, and shall be in writing. If the request is not granted within 30 days after it is made, the requestor may treat it as rejected. Any person aggrieved by the action of an insurer or rating organization in refusing the review requested or in failing or refusing to grant all or part of the relief requested, may file a written complaint and request for hearing with the Commissioner, and shall specify the grounds relied upon. If the Commissioner has information concerning a similar complaint he may deny the hearing. If the Commissioner believes that probable cause for the complaint does not exist or that the complaint is not made in good faith, he shall deny the hearing. If the Commissioner finds that the complaint charges a violation of this Article and that the complainant would be aggrieved if the violation is proven, he shall proceed as provided in G.S. 58-131.54. (1977, c. 828, s. 2.)

**§ 58-131.54. Hearing and judicial review.** — (a) Any insurer, person, or organization to which the Commissioner has directed an order or decision made without a hearing may, within 30 days after notice to it of the order or decision, make written request to the Commissioner for a hearing thereon. The Commissioner shall hear the party or parties within 20 days after receipt of the request and shall give not less than 10 days' written notice of the time and place of hearing. Within 15 days after the hearing, the Commissioner shall affirm, reverse, or modify his previous action, and specify his reasons therefor. Pending such hearing and decision thereon, the Commissioner may suspend or postpone the effective date of his previous action.

(b) Any order or decision of the Commissioner shall be subject to judicial review as provided in Article 2 of this Chapter. (1977, c. 828, s. 2.)

**§ 58-131.55. Penalties.** — (a) The Commissioner may, if he finds that any person or organization has violated any provision of this Article, impose a penalty of not more than five hundred dollars (\$500.00) for each such provision violated; but if he finds such violation to be willful, he may impose a penalty of not more than five thousand dollars (\$5,000) for each such provision violated. Such penalties may be in addition to any other penalty provided by law.

(b) The Commissioner may suspend the license of any rating organization or insurer that fails to comply with an order of the Commissioner within the time limited by such order, or within any extension thereof that the Commissioner may grant. The Commissioner shall not suspend the license of any rating

organization or insurer for failure to comply with an order until the time prescribed for an appeal therefrom has expired or, if an appeal has been taken, until such order has been affirmed. The Commissioner may determine when a suspension of a license shall become effective, and such suspension shall remain in effect for the period fixed by him unless he modifies or rescinds such suspension, or until the order upon which such suspension is based is modified, rescinded, or reversed.

(c) No penalty shall be imposed and no license shall be suspended or revoked except upon a written order of the Commissioner stating his findings, made after a hearing held upon not less than 10 days' written notice to such person or organization, and specifying the alleged violation. (1977, c. 828, s. 2.)

**§ 58-131.56. Policy forms.** — Except for fidelity, surety, or guaranty bonds and except as to inland marine risks which by general custom of the business are not written according to manual rates or rating plans, no policy form applying to insurance on risks or operations covered by this Article shall be delivered or issued for delivery unless it has been filed with the Commissioner and either he has approved it, or 90 days have elapsed and he has not disapproved it. (1977, c. 828, s. 2.)

**§ 58-131.57. Existing rates, rating systems, territories, classifications and policy forms.** — Rates, rating systems, territories, classifications, and policy forms lawfully in use on September 1, 1977, may continue to be used thereafter, notwithstanding any provision of this Article. (1977, c. 828, s. 2.)

**§ 58-131.58. Payment of dividends not prohibited or regulated; plan for payment into rating system.** — Nothing in this Article shall be construed to prohibit or regulate the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers. A plan for the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers shall not be deemed a rating plan or system. (1977, c. 828, s. 2.)

**§ 58-131.59. Notice of coverage or rate change.** — Whenever an insurer changes the coverage other than at the request of the insured or changes the premium rate, it shall give the insured written notice of such coverage change or premium rate change at least 15 days in advance of the effective date of such change or changes with a copy of such notice to the agent. This section shall apply to all policies and coverages subject to the provisions of this Article. (1977, c. 828, s. 2.)

**§ 58-131.60. Limitation.** — Nothing in this Article shall apply to any town or county farmers mutual fire insurance association restricting their operations to not more than three adjacent counties, or to domestic insurance companies, associations, orders or fraternal benefit societies now doing business in this State on the assessment plan. (1977, c. 828, s. 2.)

## ARTICLE 17.

### *Foreign or Alien Insurance Companies.*

#### **§ 58-153. Service of legal process upon Commissioner of Insurance.**

**Service by Unlicensed Company.** — To serve legal process under this section, an insurance company must be licensed or admitted and

authorized to do business in this State. *Parris v. Garner Com. Disposal, Inc.*, 40 N.C. App. 282, 253 S.E.2d 29 (1979).

### § 58-153.1. Unauthorized Insurers Process Act.

**Applied** in *Parris v. Garner Com. Disposal, Inc.*, 40 N.C. App. 282, 253 S.E.2d 29 (1979).

## ARTICLE 17A.

### *Mergers, Rehabilitation and Liquidation of Insurance Companies.*

#### § 58-155.2. Grounds for rehabilitation.

The commissioner as rehabilitator has discretionary as well as ministerial powers.

*State ex rel. Ingram v. All Am. Assurance Co.*, 34 N.C. App. 517, 239 S.E.2d 474 (1977).

#### § 58-155.3. Order of rehabilitation; termination.

**"Step toward Removal of the Causes".** — The settlement of an outstanding debt by the rehabilitator is clearly a step "toward removal of the causes and conditions which have made

rehabilitation necessary as the court may direct." *State ex rel. Ingram v. All Am. Assurance Co.*, 34 N.C. App. 517, 239 S.E.2d 474 (1977).

#### § 58-155.11. Conduct of delinquency proceedings against insurers domiciled in this State.

Subsection (f) gives to the rehabilitator the power to appoint special counsel and to collect his fees directly out of the insurer's funds,

subject to the approval of the court. *State ex rel. Ingram v. All Am. Assurance Co.*, 34 N.C. App. 517, 239 S.E.2d 474 (1977).

#### § 58-155.18. Commencement of proceedings.

The trial court has broad supervisory powers and must also be held to have broad initiative powers as well so as to effect the mandate of such provisions as this section which directs the court after full hearing to deny or grant the application for rehabilitation "together with such other relief as the nature of the case and the interests of policyholders, creditors, stockholders, members, subscribers or the public may require." *State ex rel. Ingram v.*

*All Am. Assurance Co.*, 34 N.C. App. 517, 239 S.E.2d 474 (1977).

**Authority to Order Payment of Fair Compensation to Counsel.** — The supervisory power of the trial court in a rehabilitation suit includes the authority to order that the insurer pay fair and reasonable compensation to its counsel of record for legal services rendered. *State ex rel. Ingram v. All Am. Assurance Co.*, 34 N.C. App. 517, 239 S.E.2d 474 (1977).

## ARTICLE 17B.

### *Postassessment Insurance Guaranty Association.*

**§ 58-155.48. Powers and duties of the Association.** — (a) The Association shall:

- (1) Be obligated to the extent of the covered claims existing prior to the determination of insolvency and arising within 30 days after the determination of insolvency, or before the policy expiration date if less

than 30 days after the determination, or before the insured replaces the policy or causes its cancellation, if he does so within 30 days of the determination, but such obligation shall include only that amount of each covered claim which is in excess of one hundred dollars (\$100.00) and is less than three hundred thousand dollars (\$300,000). In no event shall the Association be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises.

- (2) Be deemed the insurer to the extent of its obligation on the covered claims and to such extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent.
- (3) Allocate claims paid and expenses incurred among the two accounts separately, and assess member insurers separately for each account amounts necessary to pay the obligation of the Association under subsection (a) above subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, the cost of examinations under G.S. 58-155.53 and other expenses authorized by this Article. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year on the kinds of insurance in the account bears to the net direct written premiums of all member insurers for the preceding calendar year on the kinds of insurance in the account; provided, for purposes of assessment only, premiums otherwise reportable by a servicing insurer under any plan of operation approved by the Commissioner of Insurance under Articles 18A or 18B of this Chapter shall not be deemed to be the net direct written premiums of such servicing insurer or association, but shall be deemed to be the net direct written premiums of the individual insurers to the extent provided for in any such plan of operation. Each member insurer shall be notified of the assessment not later than 30 days before it is due. No member insurer may be assessed in any year on any account an amount greater than two percent (2%) of that member insurer's net direct written premiums for the preceding calendar year on the kinds of insurance in the account. If the maximum assessment, together with the other assets of the Association in any account, does not provide in any one year in any account an amount sufficient to make all necessary payments from that account, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The Association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. Each member insurer may set off against any assessment, authorized payments made on covered claims and expenses incurred in the payment of such claims by the member insurer if they are chargeable to the account for which the assessment is made.
- (4) Investigate claims brought against the Association and adjust, compromise, settle, and pay covered claims to the extent of the Association's obligation and deny all other claims and may review settlements, releases and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which such settlements, releases and judgments may be properly contested.
- (5) Notify such persons as the Commissioner directs under G.S. 58-155.50(b)(1).
- (6) Handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a

servicing facility is subject to the approval of the Commissioner, but such designation may be declined by a member insurer.

- (7) Reimburse each servicing facility for obligations of the Association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the Association and shall pay the other expenses of the Association authorized by this Article.

(1977, c. 343; 1979, c. 295, § 1.)

**Editor's Note.** — The 1977 amendment added the proviso at the end of the second sentence of subdivision (a)(3).

The 1979 amendment inserted "or association" near the middle of the second sentence of subdivision (3) of subsection (a).

Session Laws 1979, c. 295, s. 2, provides "All laws and clauses of laws in conflict with this act are amended."

As subsection (b) was not changed by the amendment, it is not set out.

**§ 58-155.60. Use of deposits made by insolvent insurer.** — Notwithstanding any other provision of Chapter 58 of the General Statutes pertaining to the use of deposits made by insurance companies for the protection of policyholders, the Commissioner shall deliver to the Association, and the Association is hereby authorized to expend, any deposit or deposits previously or hereinafter made, whether or not required by statute, by an insolvent insurer to the extent those deposits are needed by the Association first to pay the covered claims in excess of one hundred dollars (\$100.00) as required by this Article and then to the extent those deposits are needed to pay all expenses of the Association relating to the insurer.

However, in the case of a deposit made by an insolvent domestic insurer, only the portions of the deposit made for the protection of policyholders having covered claims shall be delivered by the Commissioner to the Association. Said portions shall be in the proportions that the insolvent domestic insurer's domestic net direct written premiums for the preceding calendar year on the kinds of insurance in the account bears to its total net direct written premiums for the preceding calendar year on the kinds of insurance in the account.

The Association shall account to the Commissioner and the insolvent insurer for all deposits received from the Commissioner hereunder, and shall repay to the Commissioner a portion of the deposits received which shall be equal to an amount computed by adding the lesser of the amount of the covered claim or one hundred dollars (\$100.00) for each covered claim. Said repayment shall in no way prejudice the rights of the Association with regard to the portion of the deposit repaid to the Commissioner. After all of the deposits of the insolvent insurer have been expended by the Association for the purposes set out in this section, the member insurers shall be assessed as provided by this Article to pay any remaining liabilities of the Association arising under this Article. (1979, c. 628.)

**§§ 58-155.61 to 58-155.64:** Reserved for future codification purposes.

## ARTICLE 17C.

### *Life and Accident and Health Insurance Guaranty Association.*

**§ 58-155.84. Use of deposits made by impaired insurer.** — Notwithstanding any other provision of Chapter 58 of the General Statutes pertaining to the use of deposits made by insurance companies for the protection of policyholders, the Commissioner shall deliver to the Association, and the Association is hereby authorized to expend, any deposit or deposits previously or hereinafter made, whether or not made pursuant to statute, by an insurer determined to be

impaired under this Article to the extent those deposits are needed by the Association to pay contractual obligations of that impaired insurer owed under covered policies as required by this Article, and to the extent those deposits are needed to pay all expenses of the Association relating to the impaired insurer. The Association shall account to the Commissioner and the impaired insurer for all deposits received from the Commissioner hereunder. After all of the deposits of the impaired insurer have been expended by the Association for the purposes set out in this section, the member insurers shall be assessed as provided by this Article to pay any remaining liabilities of the Association arising under this Article. (1979, c. 418.)

## ARTICLE 18A.

### *Essential Property Insurance for Beach Area Property.*

**§ 58-173.1. Declarations and purpose of Article.** — It is hereby declared by the General Assembly of North Carolina that an adequate market for essential property insurance is necessary to the economic welfare of the beach area of the State of North Carolina and that without such insurance the orderly growth and development of the beach area of the State of North Carolina would be severely impeded; that furthermore, adequate insurance upon property in the beach area is necessary to enable homeowners and commercial owners to obtain financing for the purchase and improvement of their property; and that while the need for such insurance is increasing, the market for such insurance is not adequate and is likely to become less adequate in the future; and that the present plans to provide adequate insurance on property in the beach area, while deserving praise, have not been sufficient to meet the needs of this area. It is further declared that the State has an obligation to provide an equitable method whereby every licensed insurer writing essential property insurance in North Carolina is required to meet its public responsibility instead of shifting the burden to a few willing and public-spirited insurers. It is the purpose of this Article to accept this obligation and to provide a mandatory program to assure an adequate market for essential property insurance in the beach area of North Carolina. (1967, c. 1111, s. 1; 1969, c. 249; 1979, c. 601, s. 1.)

**Editor's Note.** — The 1979 amendment substituted "essential property" for "fire and extended coverage" near the beginning of the

first sentence, near the middle of the second sentence, and near the end of the third sentence of this section.

**§ 58-173.2. Definition of terms.** — In this Article, unless the context otherwise requires,

- (4) "Essential property insurance" means insurance against direct loss to property as defined in the standard statutory fire policy and extended coverage, vandalism and malicious mischief endorsements thereon, as approved by the Commissioner;
- (6) "Net direct premiums" means gross direct premiums (excluding reinsurance assumed and ceded) written on property in this State for essential property insurance, including the fire and extended coverage components of homeowners and commercial multiple peril package policies as computed by the Commissioner, less return premiums upon cancelled contracts, dividends paid or credited to policyholders or the unused or unabsorbed portion of premium deposits, and further excluding premiums on farm properties and manufacturing risks; (1979, c. 601, ss. 2, 3.)

**Editor's Note.** — The 1979 amendment deleted "and limited" after "defined" near the middle of subdivision (4), substituted "vandalism and malicious mischief endorsements" for "endorsement" near the end of subdivision (4), and substituted "essential property insurance"

for "fire and extended coverage insurance" near the middle of subdivision (6).

As the rest of the section was not changed by the amendment, only the introductory language and subdivisions (4) and (6) are set out.

**§ 58-173.10. Rates, rating plans and rate rules applicable.** — The rates, rating plans and rating rules applicable to the insurance written by the Association shall be in accord with the manual rates in current usage throughout the State of North Carolina. No special surcharge (other than those presently in effect) may be applied to the essential property insurance rates of properties located in the beach area. (1967, c. 1111, s. 1; 1969, c. 249; 1979, c. 601, s. 4.)

**Editor's Note.** — The 1979 amendment substituted "essential property insurance" for

"fire or extended coverage" near the middle of the second sentence.

### SUBCHAPTER III. FIRE INSURANCE.

#### ARTICLE 18B.

##### *Fair Access to Insurance Requirements.*

**§ 58-173.27. Termination; outstanding obligations; revival and extension.** — This Article shall expire on December 31, 1980, or after the expiration of the Urban Property Protection and Reimbursement Act of 1968, whichever shall first occur, except that rights and obligations incurred by the Association and its members to be established pursuant to the provisions of this Chapter shall not be impaired by the expiration of this Article, and such association shall be continued for the purpose of performing such obligations. If the Urban Property Protection and Reimbursement Act of 1968 expires at any time and is subsequently revived or extended, this Article shall be revived and extended and shall be and remain effective simultaneously with the effective dates of the Urban Property Protection and Reimbursement Act of 1968. (1969, c. 1284; 1973, c. 1440, s. 1; 1977, c. 109.)

**Editor's Note.** —

The 1977 amendment substituted "1980" for "1977" near the beginning of the first paragraph and added the second sentence.

**§§ 58-173.29 to 58-173.33:** Reserved for future codification purposes.

#### ARTICLE 18C.

##### *North Carolina Health Care Liability Reinsurance Exchange.*

**§ 58-173.34. Declarations and purpose of the Article.** — It is hereby declared by the General Assembly of North Carolina that the availability of health care liability insurance for physicians and surgeons, dentists, nurses, nurse anesthetists, hospitals and others engaged in the healing practicing arts is necessary for the economic welfare of the State and that without such insurance health care services may be severely curtailed; and that while the need for such insurance is increasing, the supply is not adequate and is likely to

become less adequate in the future; and that present plans to provide adequate health care liability insurance in North Carolina have not been sufficient to meet the needs of our citizens. It is further declared that the State has an obligation to provide an equitable method whereby every insurer licensed to write general liability insurance in North Carolina be required to meet this market demand. It is the purpose of this Article to define this obligation and provide a mandatory program to assure an adequate supply of health care liability insurance coverages in the State of North Carolina. (1975, c. 427, s. 1.)

**Editor's Note.** — Session Laws 1975, c. 427, s. 2, contains a severability clause.

For survey of 1976 case law on constitutional law, see 55 N.C.L. Rev. 965 (1977).

**Article Unconstitutional.** — Since it is specifically declared in this section that the purpose of this Article is to impose upon all companies licensed to write in North Carolina insurance against liability for personal injury or property damage, a mandatory program for the writing by them of health care liability insurance, all parts of this Article are related to, and designed to accomplish, this unconstitutional purpose, and the entire Article is in excess of the power of the General

Assembly under the Constitution of this State. Hartford Accident & Indem. Co. v. Ingram, 290 N.C. 457, 226 S.E.2d 498 (1976).

The State may not, consistent with the Law of the Land Clause of this section, or the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States, require an insurance company to engage in the health care liability insurance business as a condition to its right to continue to carry on an entirely different business for which it is duly licensed by the State and in which it wants to be, and is, engaged. Hartford Accident & Indem. Co. v. Ingram, 290 N.C. 457, 226 S.E.2d 498 (1976).

**§ 58-173.35. Scope.** — This Article shall apply to all kinds of health care liability insurance for physicians and surgeons, dentists, nurses, nurse anesthetists, hospitals and others engaged in the healing practicing arts which is designed to afford protection against liability that may arise from rendering or failing to render services of a professional nature. (1975, c. 427, s. 1.)

**§ 58-173.36. Construction.** — This Article shall be liberally construed to effect the purposes of this Article which shall constitute [an] aid and guide to interpretation. (1975, c. 427, s. 1.)

**§ 58-173.37. Definitions.** — As used in this Article:

- (1) "Cede" or "cession" means the act of transferring the profit or loss of otherwise unacceptable business (to the extent permitted in the plan of operation) from the individual insurer to all insurers through the operation of the Exchange.
- (2) "Commissioner" means the Commissioner of Insurance of this State.
- (3) "Company" means each member of the Exchange.
- (4) "Eligible risk" means a person who is a resident of this State who holds a valid license to practice or perform in this State a given health care profession as set forth in the license requirements of the statutory board issuing said license, and hospitals as defined in G.S. 131-126.1(3), including but not limited to the following categories: physicians, surgeons, dentists, nurses, nurse anesthetists, physiotherapists, medical or X-ray laboratories, chiropractors, chiropodists, optometrists, osteopaths and blood banks, provided, however, that no person shall be deemed an eligible risk if timely payment of premium is not tendered or if there is a valid unsatisfied judgment of record against such person for recovery of amounts due for health care liability insurance premiums and such person has not been discharged from paying said judgment.
- (5) "Exchange" means the North Carolina Health Care Liability Reinsurance Exchange established pursuant to the provisions of this Article.

- (6) "General liability insurance" means insurance against legal liability of the insured as authorized under G.S. 58-72(13) and (14), excluding insurance against liability arising out of the ownership, operation, maintenance and use of a motor vehicle as defined in G.S. 20-4.01.
- (7) "Health care liability insurance" means insurance against legal liability of the insured caused by injury arising out of the rendering of, or failure to render, health care services by the insured, or by any person for whose acts or omissions such insured is legally responsible.
- (8) "Person" means every natural person, firm, partnership, association, corporation or government or agency thereof.
- (9) "Plan of operation" means the plan of operation approved pursuant to the provisions of this Article.
- (10) "Premiums" means direct written premium for all general liability insurance coverages on policyholders in this State (excluding reinsurance assumed and ceded). (1975, c. 427, s. 1.)

**Quoted in Hartford Accident & Indem. Co. v.  
Ingram,** 290 N.C. 457, 226 S.E.2d 498 (1976).

**§ 58-173.38. North Carolina Health Care Liability Reinsurance Exchange; creation; membership.** — (a) There is created a nonprofit unincorporated legal entity to be known as the North Carolina Health Care Liability Reinsurance Exchange consisting of all insurers licensed to write and engaged in writing within this State general liability insurance or any component thereof except town and county mutual insurance associations and assessable mutual companies as authorized by G.S. 58-77(5)b, 58-77(5)d and 58-77(7)b. Every such insurer, as a prerequisite to further engaging in writing such insurance in this State, shall be a member of the Exchange and shall be bound by the rules of operation thereof as provided for in this Article and as promulgated by the board of governors. No company may withdraw from membership in the Exchange unless it ceases to write general liability insurance in this State or ceases to be licensed to write such insurance.

(b) The Exchange shall be under the immediate supervision of the Commissioner and shall be subject to applicable provisions of the insurance laws of this State. (1975, c. 427, s. 1.)

**Quoted in Hartford Accident & Indem. Co. v.  
Ingram,** 290 N.C. 457, 226 S.E.2d 498 (1976).

**§ 58-173.39. Obligations after termination of membership.** — Any company whose membership in the Exchange has been terminated by withdrawal shall, nevertheless, with respect to its business prior to midnight of the effective date of such termination continue to be governed by this Article. (1975, c. 427, s. 1.)

**§ 58-173.40. Insolvency.** — Any unsatisfied net liability to the Exchange of any insolvent member shall be assumed by and apportioned among the remaining members in the Exchange in the same manner in which assessments or gain are apportioned by the Exchange. The Exchange shall have all rights allowed by law in behalf of the remaining members against the estate or funds of such insolvent for sums due the Exchange in accordance with this Article. (1975, c. 427, s. 1.)

**§ 58-173.41. Merger, consolidation or cession.** — When a member has been merged or consolidated into another insurer, or has ceded its entire general liability insurance business in the State to another insurer, such company or its

successor in interest shall remain liable for all obligations hereunder and such company and its successor in interest and the other insurers with which it has been merged or consolidated shall continue to participate in the Exchange according to the rules of operation. (1975, c. 427, s. 1.)

**§ 58-173.42. General obligations of insurers.** — Except as otherwise provided in this Article all insurers as a prerequisite to the further engaging in this State in the writing of general liability insurance or any component thereof shall accept and insure any applicant therefor who is an eligible risk if cession of the particular coverage and coverage limits applied for are permitted in the Exchange. All such insurers shall equitably share the results of any health care liability insurance business ceded to and through the Exchange and shall be bound by the acts of their agents in accordance with the provision of this Article. No insurer shall impose upon any of its agents, solely on account of ceded business received from such agents, any quota or matching requirement for any other insurance as a condition for further acceptance of ceded business from such agents. Any insurer with obligations under this section may elect with approval of the Exchange to assign the underwriting, issuance of policies, and claim handling to a designated carrier approved by the board of governors. Assignment of these functions, however, shall not relieve an insurer of its obligation to share proportionately in the financial operation of the Exchange. (1975, c. 427, s. 1.)

**Quoted in Hartford Accident & Indem. Co. v.  
Ingram,** 290 N.C. 457, 226 S.E.2d 498 (1976).

**§ 58-173.43. General obligations of agents.** — Except as otherwise provided in this Article, no licensed agent of an insurer authorized to solicit and accept premiums for general liability insurance or any component thereof by the company he represents shall refuse on behalf of said company to accept any application from an eligible risk for health care liability insurance and to immediately bind the coverage applied for and for a period of not less than one year if cession of the particular coverage and coverage limits applied for are permitted in the Exchange, provided the application is submitted during the agent's normal business hours, at his customary place of business and in accordance with the agent's customary practices and procedures. The compensation to agents on ceded business shall not be less than the customary compensation paid on business not ceded. (1975, c. 427, s. 1.)

**§ 58-173.44. The Exchange; functions; administration.** — (a) The operation of the Exchange shall assure the availability of all health care liability insurance coverages to any eligible risk by means of reinsurance and the Exchange shall accept for transfer to the account of all members the profit or loss of the business ceded in accordance with this Article, the plan of operation adopted pursuant thereto, and any amendments to either.

(b) The Exchange shall reinsure for each coverage available therein to the standard percentage of one hundred percent (100%) as follows: For the following coverages of health care liability insurance and in at least the following amounts of insurance: bodily injury and property damage liability: per occurrence twenty-five thousand dollars (\$25,000), annual aggregate seventy-five thousand dollars (\$75,000).

(c) Additional ceding privileges for health care liability insurance shall be provided by the board of governors if there is substantial demand for a coverage or coverage limit of any component of health care liability insurance up to the following: per occurrence one hundred thousand dollars (\$100,000), annual aggregate three hundred thousand dollars (\$300,000).

(d) Further additional ceding privileges for health care liability insurance shall be provided by the board of governors if there is substantial demand for excess coverage of health care liability insurance up to the following: per occurrence one million dollars (\$1,000,000), annual aggregate one million dollars (\$1,000,000).

(e) The Exchange shall require each member to adjust losses for ceded business fairly and efficiently in the same manner as other insurance losses are adjusted and to effect settlement where settlement is appropriate; however, the Exchange shall provide reasonable means whereby any insurer may elect to assign the underwriting, issuance of policies, and claim handling to a designated carrier approved by the board of governors. Assignment of these functions, however, shall not relieve an insurer of its obligation to share proportionately in the financial operation of the Exchange.

(f) The Exchange shall be administered by a board of governors. The board of governors shall consist of nine members having one vote each from the classifications hereinafter enumerated plus the Commissioner who shall serve ex officio without vote. Each Exchange insurance company member serving on the board shall be represented by a senior officer of the company. Not more than one company in a group under the same ownership or management shall be represented on the board at the same time. Five members of the board shall be selected by the member insurers, which members shall be fairly representative of the industry. To insure representative member insurers, one each shall be selected from the following groups: the American Insurance Association (or its successors), the American Mutual Insurance Alliance (or its successors), the National Association of Independent Insurers (or its successors), all other stock insurers not affiliated with the above groups, and all other nonstock insurers not affiliated with the above groups. The Commissioner of Insurance shall appoint four members of the board who shall be fire and casualty insurance agents licensed in this State and actively engaged in writing general liability insurance in this State. The Commissioner shall select one agent from among a list of two nominees submitted by the Independent Insurance Agents of North Carolina, Inc., and one agent from among a list of two nominees submitted by the Carolinas Association of Mutual Insurance Agents, North Carolina Division. The initial term of office of said board members shall be two years. Following completion of initial terms, successors to the members of the original board of governors shall be selected to serve three years. All members of the board of governors shall serve until their successors are selected and qualified and the Commissioner may fill any vacancy on the board from any of the aforementioned classifications until such vacancies are filled in accordance with the provisions of this Article.

(g) The Commissioner and member companies shall provide for a board of governors within 30 days after ratification of this Article. If any member seat on the initial board of governors is not filled in accordance with this Article within such time, then in that event the Commissioner shall appoint natural persons from any of the classifications specified in subsection (f) of this section to serve the initial term on the board of governors. As soon as possible after its selections, the Commissioner shall call for the initial meeting of the board. After the board of governors has been selected it shall then elect from its membership a chairman and shall then meet thereafter as often as the chairman shall require or at the request of three members of the board of governors. The chairman shall retain the right to vote on all issues. Five members of the board of governors shall constitute a quorum. The same member may not serve as chairman for more than two consecutive years.

(h) The board of governors shall have full power and administrative responsibility for the operation of the Exchange. Such administrative responsibility shall include but not be limited to:

- (1) Proper establishment and implementation of the Exchange.
- (2) Employment of a manager who shall be responsible for the continuous operation of the Exchange and such other employees, officers and committees as it deems necessary.
- (3) Provision for appropriate housing and equipment to assure the efficient operations of the Exchange.
- (4) Promulgation of reasonable rules and regulations for the administration and operation of the Exchange and delegation to the manager of such authority as it deems necessary to insure the proper administration and operation thereof.
  - (i) Except as may be delegated specifically to others in the plan of operation or reserved to the members, power and responsibility for the establishment and operation of the Exchange is vested in the board of governors, which power and responsibility include but are not limited to the following:
    - (1) To sue and be sued in the name of the Exchange. No judgment against the Exchange shall create any direct liability to the individual member companies of the Exchange.
    - (2) To receive and record reinsurance cessions from member companies.
    - (3) To assess members on the basis of participation ratios established in the plan of operation to cover anticipated or incurred costs of operation and administration of the Exchange at such intervals as are established in the plan of operation.
    - (4) To contract for goods and services from others to assure the efficient operation of the Exchange.
    - (5) To hear and determine complaints of any company, agent or other interested party concerning the operation of the Exchange.
    - (6) To review the market for health care liability insurance throughout North Carolina to make certain that eligible risks can readily obtain such insurance and to provide in the plan of operation a reasonable means for achieving this objective. The Exchange is authorized to require all companies in a fair and equitable manner who are writers of general liability insurance in this State to appoint and license any fire and casualty agent duly licensed to write insurance in North Carolina, in such places where a market need has been demonstrated, to be their agent to write health care liability insurance.
    - (7) To maintain all loss, expense, and premium data relative to all risks reinsured in the Exchange, and to require each member to furnish such statistics relative to insurance reinsured by the Exchange and statistics on such insurance not reinsured in the Exchange at such times and in such form and detail as may be required.
    - (8) To establish fair and reasonable procedures for the sharing among the members of profit and loss on Exchange business and other costs, charges, expenses, liabilities, income, property and other assets of the Exchange and for assessing or distributing to members their appropriate shares. Such shares may be based on the member's direct written premium for general liability insurance or by any other fair and reasonable method.
    - (9) To receive or distribute all sums required by the operation of the Exchange.
    - (10) To accept all risks submitted from the companies in accordance with this Article.
    - (11) To establish procedures for reviewing claims practices of member companies to the end that claims to the account of the Exchange will be handled fairly and efficiently.
    - (12) To adopt and enforce all rules and to do anything else where the board is not elsewhere herein specifically empowered which is otherwise necessary to accomplish the purpose of the Exchange and is not in conflict with the other provisions of this Article.

(j) Each member company shall authorize the Exchange to audit that part of the company's business which is written subject to the Exchange in a manner and time prescribed by the board of governors.

(k) The board of governors shall fix a date for an annual meeting and shall annually meet on that date. Twenty days' notice of such meeting shall be given in writing to all members of the board of governors.

(l) There shall be furnished to each member an annual report of the operation of the Exchange in such form and detail as may be determined by the board of governors.

(m) Each member shall furnish statistics in connection with insurance subject to the Exchange as may be required by the Exchange. Such statistics shall be furnished at such time and in such form and detail as may be required but at least will include premiums, charges, expenses and losses. (1975, c. 427, s. 1.)

Quoted in Hartford Accident & Indem. Co. v.  
Ingram, 290 N.C. 457, 226 S.E.2d 498 (1976).

**§ 58-173.45. Plan of operation.** — (a) Within 60 days after the initial organizational meeting, the Exchange shall submit to the Commissioner, for his approval, a proposed plan of operation, consistent with the provisions of this Article, which shall provide for economical, fair and nondiscriminating administration and for the prompt and efficient provision on health care liability insurance to eligible risks. Should no plan be submitted within the aforesaid 60-day period, then the Commissioner of Insurance shall formulate and place into effect a plan consistent with the provisions of this Article.

(b) The plan of operation, unless sooner approved in writing, shall be deemed to meet the requirements of the Article if it is not disapproved by order of the Commissioner within 30 days from the date of filing. Prior to the disapproval of all or any part of the proposed plan of operation the Commissioner shall notify the Exchange in what respect the plan of operation fails to meet the specific requirements of this Article. The Exchange shall, within 30 days thereafter, submit for his approval a revised plan of operation which meets the specific requirements of this Article. In the event the Exchange fails to submit a revised plan of operation which meets the specific requirements of this Article within the aforesaid 30-day period, the Commissioner of Insurance shall enter an order accordingly and shall immediately thereafter formulate and place into effect a plan consistent with the provisions of this Article.

(c) Any revision of the proposed plan of operation or any subsequent amendments to an approved plan of operation shall be subject to approval or disapproval by the Commissioner in the manner herein provided in subsection (b) with respect to the initial plan of operation.

(d) Any order of the Commissioner with respect to the plan of operation or any revision of [or] amendment thereof shall be subject to court review as provided in G.S. 58-9.3.

(e) Upon approval of the Commissioner of the plan so submitted or the promulgation of a plan deemed approved by the Commissioner, all insurance companies licensed to write general liability insurance in this State or any component thereof as a prerequisite to further engaging in writing such insurance shall formally subscribe to and participate in the plan so approved.

The plan of operation shall provide for, among other matters, the establishment of necessary facilities, the management of the Exchange, the preliminary assessment of all members for initial expenses necessary to commence operations, the assessment of members to defray losses and expenses, the distribution of gains, the standard amount one hundred percent (100%) of coverage afforded on eligible risks which a member company may cede to the Exchange, and the procedure by which reinsurance shall be accepted by

the Exchange; and establish procedure for receiving and maintaining separate statistics on all health care liability insurance written by each member company; and shall further provide that:

- (1) Members of the board of governors shall receive reimbursement from the Exchange for their actual and necessary expenses incurred on Exchange business, en route to perform Exchange business, and while returning from Exchange business plus a per diem allowance of twenty-five dollars (\$25.00) a day which may be waived.
- (2) In order to obtain a transfer of business to the Exchange effective when the binder or policy or renewal thereof first becomes effective, the company must within 30 days of the binding or policy effective date notify the Exchange of the identification of the insured, the coverage and limits afforded, classification data, and premium. The Exchange shall accept risks at other times on receipt of necessary information, but such acceptance shall not be retroactive. The Exchange shall accept renewal business after the member on underwriting review elects to again cede the business. (1975, c. 427, s. 1.)

**§ 58-173.46. No limit on cessions; compulsory cessions.** — Upon receipt by the company of a risk which it does not elect to retain, the company shall follow such procedures for ceding the risk as are established by the plan of operation. A company may cede to the Exchange one hundred percent (100%) of its health care liability insurance business in North Carolina. In order to prevent significant adverse selection resulting from cessions to the Exchange, the board of governors upon a finding of significant adverse selection shall require one hundred percent (100%) ceding by all members of the coverages on any of the separate eligible risk categories enumerated in G.S. 58-173.37(4). There shall be a presumption that significant adverse selection exists if for any period of one year or more the result from dividing the losses incurred by the premiums earned on business ceded to the Exchange is in excess of one hundred and five percent (105%) of the result of dividing the losses incurred by the premiums earned on business retained by the members. (1975, c. 427, s. 1.)

Quoted in Hartford Accident & Indem. Co. v.  
Ingram, 290 N.C. 457, 226 S.E.2d 498 (1976).

**§ 58-173.47. Approval of rates.** — The premium rates that may be charged on all health care liability insurance, including premiums ceded to the Health Care Liability Reinsurance Exchange established by this Article, shall be established from time to time by the Commissioner of Insurance on the basis of the latest available statistical data submitted by rating bureaus or insurers authorized to write general liability insurance in this State. Every rating bureau authorized to engage in rate making or insurer licensed in this State to write general liability insurance coverages may submit proposed changes in rates or classifications to the extent necessary to produce rates and classifications which are reasonable, adequate, not unfairly discriminatory and in the public interest, or the Commissioner, upon his own motion, may, upon the latest available statistical data, order a reduction or increase in rates. Any premium rate change shall be established by the Commissioner only after due notice and hearing as provided in G.S. 58-9.2 and with full rights of appeal as provided in G.S. 58-9.4. The rate so established by the Commissioner shall be reasonable, adequate, not excessive, not unfairly discriminatory and in the public interest. Such rates shall not be deemed unreasonable, inadequate, excessive, unfairly discriminatory or not in the public interest if they are adequate to defray the total cost of the Exchange system and if they make adequate provision for premium rates for the future which will provide for anticipated losses, anticipated loss adjustment

expenses, other anticipated expenses attributable to the selling and servicing of this line of insurance, and a fair and reasonable underwriting profit. The determination of a fair and reasonable underwriting profit shall take into consideration earnings from the investment of unearned premium reserves and loss reserves on North Carolina business. Every rating method, schedule, [and] classification submitted to the Commissioner for approval shall be deemed approved if the Commissioner, within 60 days after submission, has not issued a notice of hearing on the matter. (1975, c. 427, s. 1.)

**Quoted** in Hartford Accident & Indem. Co. v.  
Ingram, 290 N.C. 457, 226 S.E.2d 498 (1976).

**§ 58-173.48. Termination of insurance.** — No member may terminate insurance to the extent that cession of a particular type of coverage and limits is available under the provision of this Article except for the following reasons:

- (1) Nonpayment of premium when due to the insurer or producing agent.
- (2) The named insured has become a nonresident of this State and would not otherwise be entitled to insurance on submission of new application under this Article.
- (3) The license of a named insured to practice his profession is in a state of suspension or has been revoked. (1975, c. 427, s. 1.)

**§ 58-173.49. Hearings; review.** — (a) Any applicant for a policy from any carrier, any person insured under such a policy, any member of the Exchange and any agent duly licensed to write health care liability insurance may request a formal hearing and ruling by the board of governors of the Exchange on any alleged violation of or failure to comply with the plan of operation or the provisions of this Article or any alleged improper act or ruling of or in the case of a member directly affecting him as to coverage or premium or in the case of a member directly affecting its assessment, and in the case of an agent, any matter affecting his appointment to a carrier or his account therewith. The request for hearing must be made within 15 days after the date of the alleged violation or improper act or ruling. The hearing shall be held within 15 days after the receipt of the request. The hearing may be held by any panel of the board of governors consisting of not less than three members thereof, and the ruling of a majority of the panel shall be deemed to be the ruling of the board, unless the full board on its own motion shall modify or rescind the action of the panel.

(b) Any formal ruling by the board of governors may be appealed to the Commissioner by filing notice of appeal with the Exchange and Commissioner within 30 days after issuance of the ruling.

(c) The Commissioner shall hear the matter de novo and issue an order approving the action or decision, disapproving the action or decision, or directing the board of governors to act in accordance with the ruling of the Commissioner.

(d) Any aggrieved person or organization, any member of the Exchange or the Exchange may request a public hearing and ruling by the Commissioner on the provisions of the plan of operation, rules, regulations or policy forms approved by the Commissioner. The request for hearing shall specify the matter or matters to be considered. The hearing shall be held within 30 days after receipt of the request. The Commissioner shall give public notice of the hearing and the matter or matters to be considered not less than 15 days in advance of the hearing date.

(e) In any hearing held pursuant to this section by the board of governors or the Commissioner, the board or the Commissioner, as the case may be, shall issue a ruling or order within 30 days after the close of the hearing.

(f) All rulings or orders of the Commissioner under this section shall be subject to judicial review as provided in Article 2 of Chapter 58 of the General Statutes. (1975, c. 427, s. 1.)

**§ 58-173.50. Examination of the Exchange; annual report.** — The Exchange shall be subject to examination and regulation by the Commissioner. The board of governors shall submit to the Commissioner, not later than March 30 of each year, a financial report for the preceding calendar year in a form approved by the Commissioner and a report of its activities during the preceding calendar year. (1975, c. 427, s. 1.)

**§ 58-173.51. Tax exemptions.** — The Exchange shall be exempt from payment of all fees and all taxes levied by this State or any of its subdivisions, except ad valorem taxes. (1975, c. 427, s. 1.)

## ARTICLE 19.

### *Fire Insurance Policies.*

#### **§ 58-176. Fire insurance contract; standard policy provisions.**

(c) The form of the standard fire insurance policy for North Carolina (with permission to substitute for the word "company" a more accurate descriptive term for the type of insurer and with permission to change the manner of folding the policy and arrangement of the pages and the arrangement of the wording of page 1, page 3, and the back of the policy and relocation of the signatures, and any other relocations or rearrangement of the contents of the policy, with the approval of the Commissioner) shall be as follows: (See the three following pages for a form photographically reproduced.) (1899, c. 54, s. 43; 1901, c. 391, s. 4; Rev., s. 4760; 1915, c. 109, s. 9; C.S., s. 6437; 1945, c. 378; 1951, c. 767; 1955, c. 622; c. 807, s. 2; 1977, c. 828, s. 3.)

#### **Cross Reference.** —

For the Readable Insurance Policies Act, see § 58-364 et seq.

#### **Editor's Note.** —

The 1977 amendment, effective Sept. 1, 1977, deleted "for the North Carolina Fire Insurance Rating Bureau" following "and with permission" in subsection (c). Session Laws 1977, c. 828, s. 25, as amended by Session Laws 1979, c. 824, s. 8, provides: "This act shall become effective September 1, 1977, and shall not affect any existing policy during the existing term of said policy." Prior to the 1979 amendment, Session Laws 1977, c. 828, s. 25, provided: "This act shall become effective September 1, 1977, and will expire September 1, 1980, and shall not affect any existing policy during the existing term of said policy."

Session Laws 1977, c. 828, s. 24, contains a severability clause.

As the rest of the section was not changed by the amendment, only subsection (c) is set out.

**Amendment Effective July 1, 1980.** — Session Laws 1979, c. 755, ss. 2, 3 and 4, will amend subsection (b) and the introductory paragraph of subsection (e) to read as follows:

"(b) No policy or contract of fire insurance except contracts of automobile fire, theft, comprehensive and collision, marine and inland marine insurance shall be made, issued or delivered by any insurer or by any agent or

representative thereof, on any property in this State, unless it conforms in substance with all of the provisions, stipulations, agreements and conditions of the policy form in subsection (c) of this section.

"There shall be printed at the head of said policy the name of the insurer or insurers issuing the policy; the location of the home office thereof; a statement whether said insurer or insurers are stock or mutual corporations or are reciprocal insurers. No provisions of this section limit a company to the use of any particular size or manner of folding the paper upon which the policy is printed; provided, however, that any company organized under special charter provisions may so indicate upon its policy, and may add a statement of the plan under which it operates in this State.

"The standard fire insurance policy provided for herein need not be used for effecting reinsurance between insurers.

"(c) The form of the standard fire insurance policy for North Carolina (with permission to substitute for the word "company" a more accurate descriptive term for the type of insurer and with permission to change the manner of folding the policy and arrangement of the pages and the arrangement of the wording of page 1, page 3, and the back of the policy and relocation of the signatures, and any other relocations or rearrangement of the contents of the policy,

with the approval of the Commissioner) shall be as follows: (See the three following pages for a form photographically reproduced.)"

Session Laws 1979, c. 755, s. 20, contains a severability clause.

For article, "Statutes of Limitations in the Conflict of Laws," see 52 N.C.L. Rev. 489 (1974).

**Effect of "Forfeiture Clause" Where Both Personal and Real Property Involved.** — Where a fire insurance policy contained a forfeiture clause for willful misrepresentation of a material fact and contained one basic premium in payment for the coverage of both plaintiffs' house and their personal property therein, and the risk to the real and personal

property was identical, both being subject to the same fire, the policy was not divisible; therefore, where plaintiffs willfully misrepresented material facts in swearing to their proof of loss with respect to their personal property, the policy was void with respect to their real property as well. *Dale v. Iowa Mut. Ins. Co.*, 40 N.C. App. 715, 254 S.E.2d 41 (1979).

**Applied** in *Andrews v. North Carolina Farm Bureau Mut. Ins. Co.*, 26 N.C. App. 163, 215 S.E.2d 373 (1975).

**Cited** in *Greenway v. North Carolina Farm Bureau Mut. Ins. Co.*, 35 N.C. App. 308, 241 S.E.2d 339 (1978); *Collins v. Quincy Mut. Fire Ins. Co.*, 39 N.C. App. 38, 249 S.E.2d 461 (1978).

### § 58-177. Standard policy; permissible variations.

#### Cross Reference. —

For the Readable Insurance Policies Act, see § 58-364 et seq.

**Amendment Effective July 1, 1980.** — Session Laws 1979, c. 755, ss. 5, 6 and 7, effective July 1, 1980, will amend the introductory paragraph and subdivisions (6) and (7) of this section to read as follows:

**"§ 58-177. Standard policy; permissible variations.** — No fire insurance company shall issue fire insurance policies, except policies of automobile fire, theft, comprehensive and collision, marine and inland marine insurance, on property in this State other than those of the substance of the standard form as set forth in G.S. 58-176 except as follows:

(6) Appropriate forms of supplemental contract or contracts or extended coverage endorsements and other endorsements whereby the interest in the property described in such policy shall be insured against one or more of the perils which the company is empowered to assume, in addition to the perils covered by said standard fire insurance policy may be approved by the Commissioner, and their use in connection with a standard fire insurance policy may be authorized by him. In his discretion the Commissioner may authorize the printing of such supplemental contract or contracts or extended coverage endorsements and other endorsements in the substance of the form of the standard fire insurance policy. The first page of the policy may in form approved by the Commissioner be arranged to provide space for listing of amounts of insurance, rates and premiums, description of construction, occupancy and location of property covered for the basic coverages insured

under the standard form of policy and for additional coverages or perils insured under endorsements attached or printed therein, and such other data as may be conveniently included for duplication on daily reports for office records.

(7) A company may print on or in its policy, with the approval of the Commissioner, any provisions which it is required by law to insert in its policies not in conflict with the substance of provisions of such standard form. Such provisions shall be printed apart from the other provisions, agreements, or conditions of the policy, under a separate title, as follows: 'Provisions Required by Law to Be Inserted in This Policy.'

Session Laws 1979, c. 755, s. 20, contains a severability clause.

The word "restrictive" in subdivision (3) of this section, construed in light of the statutory object and not in a narrow or technical sense, was intended to cover any clause or provision included in or appended to the standard fire policy whereby an essential provision of the standard fire policy, materially influencing the rights of the insured, is limited or modified. *Greenway v. North Carolina Farm Bureau Mut. Ins. Co.*, 35 N.C. App. 308, 241 S.E.2d 339 (1978).

**Limiting Provisions.** — An insurer may insure only such properties as are situated outside the limits set out in a limiting provisions, which provision is descriptive, not restrictive, of the standard coverage. What an insurer may not do is promise general coverage, receive appropriate premium payment and then restrict coverage by a restrictively limiting provision. *Greenway v. North Carolina Farm Bureau Mut. Ins. Co.*, 35 N.C. App. 308, 241 S.E.2d 339 (1978).

## ARTICLE 20.

*Deposits and Bonds by Insurance Companies.*

**§ 58-188.9. Bond on real property warrantor.** — Any person, firm, or corporation issuing warranties allowed under G.S. 58-3.2(2) shall post a surety bond with the Secretary of State in the principal sum of not less than seventy-five thousand dollars (\$75,000); such bond shall be approved by the Secretary of State and any person to whom the warranty is issued shall have the right to institute an action to recover against the warrantor and the surety bond for breach of warranty. (1979, c. 773, s. 2.)

**Editor's Note.** — Session Laws 1979, c. 773, s. 3, makes this section effective July 1, 1979.

## ARTICLE 21.

*Insuring State Property, Officials and Employees.*

**§ 58-189. State Property Fire Insurance Fund created.** — Upon the expiration of all existing policies of fire insurance upon state-owned buildings, fixtures, furniture, and equipment, including all such property the title to which may be in any State department, institution, or agency, the State of North Carolina shall not reinsure any of such properties.

There is hereby created a "State Property Fire Insurance Fund," which shall be as a special fund in the State treasury, for the purpose of providing a reserve against loss from fire at State departments and institutions. The State Treasurer shall be the custodian of the "State Property Fire Insurance Fund" and shall invest its assets in accordance with the provisions of G.S. 147-69.2 and 147-69.3. The unexpended appropriations of State departments and institutions for fire insurance premiums for the fiscal year 1944-1945 and the appropriations for fire insurance premiums made for the biennium 1945-1947 or that may thereafter be made for this purpose shall be transferred to the "State Property Fire Insurance Fund." (1945, c. 1027, s. 1; 1963, c. 462; 1975, c. 519, s. 1; 1979, c. 467, s. 4.)

**Editor's Note.** — The 1975 amendment made changes in the former second sentence of the second paragraph.

The 1979 amendment substituted the present second sentence of the second paragraph for the former second sentence, which required the

State Treasurer to invest funds deposited in the State Property Fire Insurance Fund in the same type of securities in which the North Carolina Teachers' and State Employees' Retirement System funds may be invested.

**§ 58-190. Appropriations; fund to pay administrative expenses.** — Upon the expiration of the existing fire insurance policies on said properties and in making appropriations for any biennium after the next biennium, the Commissioner of Insurance shall file with the Department of Administration his estimate of the appropriations which will be necessary in order to set up and maintain an adequate reserve to provide a fund sufficient to protect the State, its departments, institutions, and agencies from loss or damage to any of said properties up to fifty per centum (50%) of the value thereof. Appropriations made for the creating of such fire insurance reserves against property of the Department of Agriculture, or the Department of Transportation or any special operating fund shall be charged against the funds of such departments.

The State Property Fire Insurance Fund is authorized and empowered to pay all the administrative expenses occasioned by the administration of Article 21 of

Chapter 58 of the General Statutes. (1945, c. 1027, s. 2; 1957, c. 65, s. 11; c. 269, s. 1; 1959, c. 182, s. 1; 1973, c. 507, s. 5; 1977, c. 464, s. 34.)

**Editor's Note.** —

The 1977 amendment, effective July 1, 1977, substituted "Department of Transportation" for "Board of Transportation" in the second sentence of the first paragraph.

Pursuant to Session Laws 1957, c. 269, s. 1, "Department of Administration" has been substituted for "Budget Bureau" near the middle of the first sentence. See § 143-344(a).

**§ 58-191.1. Extended coverage insurance.** — Upon request of any State department, agency or institution, extended coverage insurance, and other property insurance, may be provided on designated state-owned property of such department, agency or institution which is insured by the State Property Fire Insurance Fund. Premiums for such insurance coverage shall be paid by each requesting department, agency or institution in accordance with rates fixed by the Commissioner of Insurance. Losses covered by such insurance may be paid for out of the State Property Fire Insurance Fund in the same manner as fire losses. The Commissioner of Insurance, with the approval of the Governor and Council of State, is authorized and empowered to purchase from insurers admitted to do business in North Carolina such insurance or reinsurance as may be necessary to protect the State Property Fire Insurance Fund against loss with respect to such insurance coverage. The words "extended coverage insurance," as used in this section, mean insurance against loss or damage caused by windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles or smoke. (1957, c. 67; 1975, c. 519, s. 2.)

**Editor's Note.** — The 1975 amendment substituted "and other property insurance may be" for "shall be" in the first sentence.

**§ 58-191.3. Professional liability insurance for officials and employees of the State.** — The Commissioner of Insurance may acquire professional liability insurance covering the officers and employees of any State department, institution or agency upon the request of such State department, institution or agency. Premiums for such insurance coverage shall be paid by the requesting department, institution or agency at rates fixed by the Commissioner from funds made available to it for the purpose. The Commissioner, in placing a contract for such insurance is authorized to place such insurance through the Public Officers and Employees' Liability Insurance Commission of the Department of Administration, and shall exercise all efforts to place such insurance through the said commission prior to attempting to procure such insurance through any other source.

The Commissioner, pursuant to this section, may acquire professional liability insurance covering the officers and employees of a department, institution or agency of State government only if the coverage to be provided by such policy is coverage of claims in excess of the protection provided by Articles 31 and 31A of Chapter 143 of the General Statutes.

The purchase, by any State department, institution or agency of professional liability insurance covering the law enforcement officers, officers or employees of such department, institution or agency shall not be construed as a waiver of any defense of sovereign immunity by such department, institution or agency. The purchase of such insurance shall not be deemed a waiver by any employee of the defense of sovereign immunity to the extent that such defense may be available to him.

The payment, by any State department, institution or agency of funds as premiums for professional liability insurance through the plan provided herein,

covering the law-enforcement officers or officials or employees of such department, institution or agency is hereby declared to be for a public purpose. (1979, c. 206, s. 1.)

**Editor's Note.** — Session Laws 1979, c. 206, s. 2, provides that this section shall become effective July 1, 1980.

**§ 58-194.2. Insurance and official fidelity bonds for State agencies to be placed by Insurance Department; costs of such placement.** — All insurance and all official fidelity and surety bonds authorized for the several departments, institutions, and agencies shall be effected and placed by the Insurance Department, and the cost of such placement shall be paid by the department, institution, or agency involved upon bills rendered to and approved by the Insurance Commissioner. (1975, c. 875, s. 11.)

**Editor's Note.** — Session Laws 1975, c. 875, s. 64, makes the act effective July 1, 1975.

## SUBCHAPTER IV. LIFE INSURANCE.

### ARTICLE 22.

#### *General Regulations of Business.*

##### **§ 58-195.2. Credit life insurance defined.**

**Nothing in statutes grant to Commissioner express or implied authority to set rates for credit life insurance.** State ex rel. Commissioner of Ins. v. Integon Life Ins. Co., 28 N.C. App. 7, 220 S.E.2d 409 (1975).

The conspicuous absence of express rate-making authority with regard to credit life insurance when such authority existed with regard to credit accident and health insurance manifests the fact that no such authority has been conferred. State ex rel. Commissioner of Ins. v. Integon Life Ins. Co., 28 N.C. App. 7, 220 S.E.2d 409 (1975).

**Nor Does Companies' Acquiescence Raise Such Authority.** — Commissioner's contention

that acquiescence by companies writing credit life insurance in rates set by prior Commissioners of Insurance gives present Commissioner the authority to fix credit life rates is untenable. State ex rel. Commissioner of Ins. v. Integon Life Ins. Co., 28 N.C. App. 7, 220 S.E.2d 409 (1975).

**Former Statute's Authority Inapplicable.** — Since former § 54-260.2 applied only to credit accident and health insurance defined in § 58-254.8, it had no application to credit life insurance and cannot be seen as granting implied authority to set credit life rates. State ex rel. Commissioner of Ins. v. Integon Life Ins. Co., 28 N.C. App. 7, 220 S.E.2d 409 (1975).

**§ 58-195.5. Policies to be issued to any person possessing the sickle cell trait or hemoglobin C trait.** — No insurance company licensed in this State pursuant to the provisions of Chapter 58 shall refuse to issue or deliver any policy of life insurance authorized thereunder solely by reason of the fact that the person to be insured possesses sickle cell trait or hemoglobin C trait; nor shall any such policy issued and delivered in this State carry a higher premium rate or charge by reason of the fact that the person to be insured possesses said traits. The term "sickle cell trait" is defined as the condition wherein the major natural hemoglobin components present in the blood of the individual are hemoglobin A (normal) and hemoglobin S (sickle hemoglobin) as defined by standard chemical and physical analytic techniques, including electrophoresis, and the proportion of hemoglobin A is greater than the proportion of hemoglobin S or one natural parent of the individual is shown to have only normal

hemoglobin components (hemoglobin A, hemoglobin A2, hemoglobin F) in the normal proportions by standard chemical and physical analytic tests. The term "hemoglobin C trait" is defined as the condition wherein the major natural hemoglobin components present in the blood of the individual are hemoglobin A (normal) and hemoglobin C as defined by standard chemical and physical analytic techniques, including electrophoresis, and the proportion of hemoglobin A is greater than the proportion of hemoglobin C or one natural parent of the individual is shown to have only normal hemoglobin components (hemoglobin A, hemoglobin A2, hemoglobin F) in the normal proportions by standard chemical and physical analytic tests. (1975, c. 600, s. 1.)

**Editor's Note.** — Session Laws 1975, c. 600, s. 2, provides: "This act shall become effective July 1, 1975, and shall apply to policies of insurance

delivered or issued for delivery in this State on and after July 1, 1975."

#### § 58-201.1. Standard Valuation Law.

- (c) (1) Except as otherwise provided in subdivision (3) of this subsection, the minimum standard for the valuation of all such policies and contracts issued prior to the operative date of G.S. 58-201.2 shall be that provided by the laws in effect immediately prior to such date, except that the minimum standard for the valuation of annuities and pure endowments purchased under group annuity and pure endowment contracts issued prior to such effective date shall be that provided by the laws in effect immediately prior to such date but replacing the interest rates specified in such laws by an interest rate of five percent (5%) per annum.
- (2) Except as otherwise provided in subdivision (3) of this subsection, the minimum standards for the valuation of all such policies and contracts issued on or after the operative date of G.S. 58-201.2 shall be the Commissioner's reserve valuation methods defined in subsections (d), (d-1) and (g), five percent (5%) interest for group annuity and pure endowment contracts and three and one-half percent (3 1/2%) interest for all other policies and contracts, or, in the case of policies and contracts other than annuity and pure endowment contracts, issued on or after July 1, 1975, four percent (4%) interest for such policies issued prior to the effective date of this amendatory act of 1979, and four and one-half percent (4 1/2%) interest for such policies issued on or after April 19, 1979, and the following tables:
- a. For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies — the Commissioner's 1941 Standard Ordinary Mortality Table for such policies issued prior to the operative date of subdivision (e)(2) of G.S. 58-201.2, and the Commissioner's 1958 Standard Ordinary Mortality Table for such policies issued on or after such operative date; provided that for any category of such policies issued on female risks all modified net premiums and present values referred to in this section may be calculated according to an age not more than six years younger than the actual age of the insured;
  - b. For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies — the 1941 Standard Industrial Mortality Table for such policies issued prior to the operative date of subdivision (e)(3) of G.S. 58-201.2, and the Commissioner's 1961 Standard Industrial Mortality Table for such policies issued on or after such operative date;

- c. For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies — the 1937 Standard Annuity Mortality Table, or at the option of the company, the Annuity Mortality Table for 1949, Ultimate, or any modification of either of these tables approved by the Commissioner;
  - d. For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies — the Group Annuity Mortality Table for 1951, any modification of such table approved by the Commissioner, or, at the option of the company, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts;
  - e. For total and permanent disability benefits in or supplementary to ordinary policies or contracts — for policies or contracts issued on or after January 1, 1966, the tables of Period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 Disability Study of the Society of Actuaries, with due regard to the type of benefit; for policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either such tables or, at the option of the company, the Class (3) Disability Table (1926); and for policies issued prior to January 1, 1961, the Class (3) Disability Table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies;
  - f. For accidental death benefits in or supplementary to policies — for policies issued on or after January 1, 1966, the 1959 Accidental Death Benefits Table; for policies issued on or after January 1, 1961, and prior to January 1, 1966, either such table or, at the option of the company, the Inter-Company Double Indemnity Mortality Table; and for policies issued prior to January 1, 1961, the Inter-Company Double Indemnity Mortality Table. Either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies;
  - g. For group life insurance, life insurance issued on the substandard basis and other special benefits — such tables as may be approved by the Commissioner.
- (3) The minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after the operative date of this subdivision (3), as defined herein, and for all annuities and pure endowments purchased on or after such operative date under group annuity and pure endowment contracts, shall be the Commissioner's reserve valuation methods defined in subsections (d) and (d-1) and the following tables and interest rates:
- a. For individual annuity and pure endowment contracts issued prior to April 19, 1979, excluding any disability and accidental death benefits in such contracts — the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the Commissioner, and six percent (6%) interest for single premium immediate annuity contracts, and four percent (4%) interest for all other individual annuity and pure endowment contracts;
  - b. For individual single premium immediate annuity contracts issued on or after April 19, 1979, excluding any disability and accidental death benefits in such contracts, — the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the Commissioner, and seven and one-half percent (7 1/2%) interest;
  - c. For individual annuity and pure endowment contracts issued on or after April 19, 1979, other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in

such contracts, — the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the Commissioner, and five and one-half percent (5 1/2%) interest for single premium deferred annuity and pure endowment contracts and four and one-half percent (4 1/2%) interest for all other such individual annuity and pure endowment contracts;

- d. For all annuities and pure endowments purchased prior to April 19, 1979 under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts — the 1971 Group Annuity Mortality Table, or any modification of this table approved by the Commissioner, and six percent (6%) interest;
- e. For all annuities and pure endowments purchased on or after April 19, 1979 under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, — the 1971 Group Annuity Mortality Table, or any modification of this table approved by the Commissioner, and seven and one-half percent (7 1/2%) interest.

After July 1, 1975, any company may file with the Commissioner a written notice of its election to comply with the provisions of this subdivision (3) after a specified date before January 1, 1979, which shall be the operative date of this subdivision for such company, provided that an insurer may elect a different operative date for individual annuity and pure endowment contracts from that elected for group annuity and pure endowment contracts. If a company makes no such election, the operative date of this subdivision for such company shall be January 1, 1979.

(d) Except as otherwise provided in subsections (d-1) and (g), reserves, according to the Commissioner's reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of (1) over (2), as follows:

- (1) A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due; provided, however, that such net level annual premium shall not exceed the net level annual premium on the 19-year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such policy;
- (2) A net one-year term premium for such benefits provided for in the first policy year.

Reserves according to the Commissioner's reserve valuation method for

- (1) Life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums;
- (2) Group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code, as now or hereafter amended;

- (3) Disability and accidental death benefits in all policies and contracts; and  
(4) All other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts,

shall be calculated by a method consistent with the principles of this subsection except that any extra premiums charged because of impairments or special hazards shall be disregarded in the determination of modified net premiums.

(d-1) This subsection shall apply to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code, as now or hereafter amended.

Reserves according to the Commissioner's annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in such contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by such contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of such contract, that become payable prior to the end of such respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate, or rates, specified in such contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of such contracts to determine nonforfeiture values.

(e) In no event shall a company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, issued on or after the operative date of G.S. 58-201.2, be less than the aggregate reserves calculated in accordance with the methods set forth in subsections (d), (d-1) and (g) and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

(f) Reserves for all policies and contracts issued prior to the operative date of G.S. 58-201.2 may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by the laws in effect immediately prior to such date.

Reserves for any category of policies, contracts or benefits as established by the Commissioner, issued on or after the operative date of G.S. 58-201.2, may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for therein.

Any such company which at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the Commissioner, adopt any lower standard of valuation, but not lower than the minimum herein provided.

(g) If in any contract year the gross premium charged by any life insurance company on any policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve thereon but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for such policy or contract shall be the

greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy or contract, or the reserve calculated by the method actually used for such policy or contract but using the minimum standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. (1945, c. 379; 1959, c. 484, s. 1; 1961, c. 255, ss. 1-3; 1963, c. 791, ss. 1, 2; 1975, c. 603, s. 1; 1979, c. 409, ss. 1-6.)

**Editor's Note.** — The 1975 amendment, effective July 1, 1975, in subsection (c), rewrote the introductory paragraph as subdivision (2), inserted present subdivision (1), redesignated former subdivisions (1) through (7) as paragraphs a through g of subdivision (2), and added subdivision (3).

The 1979 amendment, in subsection (c), added the language beginning "except that the minimum standard" in subdivision (1), rewrote the introductory paragraph in subdivision (2), and substituted "six years" for "three years" near the end of paragraph a of subdivision (2). In subdivision (3) of subsection (c), the amendment substituted "methods defined in subsections (d) and (d-1)" for "method defined in subsection (d)" near the end of the introductory paragraph, substituted "April 19, 1979," for "Jan. 1, 1986" near the beginning of paragraph a, added present paragraph b, redesignated former paragraphs b, c, and d as paragraphs c, d, and e, rewrote paragraph c, substituted "April 19, 1979," for "Jan. 1, 1986" near the beginnings of paragraphs d and e, and substituted "seven and one-half percent (7 1/2%) interest" for "three

and one-half percent (3 1/2%) interest" at the end of paragraph e. In subsection (d), the amendment added "Except as otherwise provided in subsections (d-1) and (g)" at the beginning of the subsection, substituted the present subdivision (2) of the second paragraph of subsection (d) for one which read "Annuity and pure endowment contracts," and added "and benefits provided by all other annuity and pure endowment contracts" in subdivision (4) of the second paragraph of subsection (d). The amendment added subsection (d-1) and inserted "(d-1) and (g)" near the end of subsection (e). In the second paragraph of subsection (f), the amendment inserted "for policies and contracts, other than annuity and pure endowment contracts" near the end, and deleted the former second sentence, which allowed reserves for participating life insurance policies to have interest calculated at a rate lower than that used in calculating the nonforfeiture benefits of such policies. The amendment also rewrote subsection (g).

As subsections (a) and (b) were not changed by the amendments, they are not set out.

## § 58-201.2. Standard nonforfeiture provisions. — (a) This section shall be known as the Standard Nonforfeiture Law for Life Insurance.

- (e) (1) Except as provided in the third paragraph of this subdivision, the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding any extra premiums charged because of impairments or special hazards, that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of (i) the then-present value of the future guaranteed benefits provided for by the policy; (ii) two percent (2%) of the amount of insurance, if the insurance be uniform in amount, or of the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with duration of the policy; (iii) forty percent (40%) of the adjusted premium for the first policy year; (iv) twenty-five percent (25%) of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less. Provided, however, that in applying the percentages specified in (iii) and (iv) above, no adjusted premium shall be deemed to exceed four percent (4%) of the amount of insurance or uniform amount equivalent thereto. The date of issue of a policy for the purpose of this

subsection shall be the date as of which the rated age of the insured is determined.

In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent uniform amount thereof for the purpose of this section shall be deemed to be the uniform amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy, provided, however, that in the case of a policy providing a varying amount of insurance issued on the life of a child under age 10, the equivalent uniform amount may be computed as though the amount of insurance provided by the policy prior to the attainment of age 10 were the amount provided by such policy at age 10.

The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to (i) the adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased, during the period for which premiums for such term insurance benefits are payable, by (ii) the adjusted premiums for such term insurance, the foregoing items (i) and (ii) being calculated separately and as specified in the first two paragraphs of this section except that, for the purposes of (ii), (iii) and (iv) of the first such paragraph, the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in (ii) of this paragraph shall be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in (i).

Except as otherwise provided in subdivisions (2) and (3) of this subsection, all adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of the Commissioner's 1941 Standard Ordinary Mortality Table, provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three years younger than the actual age of the insured, and such calculations for all policies of industrial insurance shall be made on the basis of the 1941 Standard Industrial Mortality Table. All calculations shall be made on the basis of the rate of interest, not exceeding three and one-half percent ( $3\frac{1}{2}\%$ ) per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may not be more than one hundred and thirty percent (130%) of the rates of mortality according to such applicable table. Provided, further, that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the Commissioner.

- (2) In the case of ordinary policies issued on or after the operative date of this subdivision (2) as defined herein, all adjusted premiums and present values referred to in this section shall be calculated on the basis of the Commissioner's 1958 Standard Ordinary Mortality Table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits, provided that such rate of interest

shall not exceed three and one-half percent (3 1/2%) per annum except that a rate of interest not exceeding four percent (4%) per annum may be used for policies issued on or after July 1, 1975, and prior to April 19, 1979, and a rate of interest not exceeding five and one-half percent (5 1/2%) per annum may be used for policies issued on or after April 19, 1979 and, provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than six years younger than the actual age of the insured; provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioner's 1958 Extended Term Insurance Table. Provided, further, that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the Commissioner.

After May 12, 1959, any company may file with the Commissioner a written notice of its election to comply with the provisions of this subdivision (2) after a specified date before January 1, 1966. After the filing of such notice, then upon such specified date (which shall be the operative date of this subdivision (2) for such company), this subdivision (2) shall become operative with respect to the ordinary policies thereafter issued by such company. If a company makes no such election, the operative date of this subdivision (2) for such company shall be January 1, 1966.

- (3) In the case of industrial policies issued on or after the operative date of this subdivision (3) as defined herein, all adjusted premiums and present values referred to in this section shall be calculated on the basis of the Commissioner's 1961 Standard Industrial Mortality Table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits, provided that such rate of interest shall not exceed three and one-half percent (3 1/2%) per annum except that a rate of interest not exceeding four percent (4%) per annum may be used for policies issued on or after July 1, 1975, and prior to April 19, 1979, and a rate of interest not exceeding five and one-half percent (5 1/2%) per annum may be used for policies issued on or after April 19, 1979, provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioner's 1961 Industrial Extended Term Insurance Table. Provided, further, that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the Commissioner.

After June 11, 1963, any company may file with the Commissioner a written notice of its election to comply with the provisions of this subdivision (3) after a specified date before January 1, 1968. After the filing of such notice, then upon such specified date (which shall be the operative date of this subdivision (3) for such company), this subdivision (3) shall become operative with respect to the industrial policies thereafter issued by such company. If a company makes no such election, the operative date of this subdivision (3) for such company shall be January 1, 1968.

(1975, c. 603, ss. 2, 3; 1979, c. 409, ss. 7-9.)

**Editor's Note.** — The 1975 amendment, effective July 1, 1975, in subdivisions (2) and (3) of subsection (e), deleted "not exceeding three and one-half percent (3½%) per annum" following "rate of interest" near the middle of the first sentences and inserted the first proviso in those sentences.

The 1979 amendment added "for Life Insurance" at the end of subsection (a). In subsection (e), the amendment substituted "to April 19, 1979, and at a rate of interest not exceeding five and one-half percent (5½%) per annum may be used for policies issued on or

after April 19, 1979," for "to January 1, 1986" and "six years" for "three years" near the middle of the first sentence of subdivision (2), and in subdivision (3) substituted "to April 19, 1979, and a rate of interest not exceeding five and one-half percent (5½%) per annum may be used for policies issued on or after April 19, 1979," for "to January 1, 1986" near the middle of the first sentence of the first paragraph.

As the rest of the section was not changed by the amendment, only subsections (a) and (e) are set out.

### § 58-201.3. Standard Nonforfeiture Law for Individual Deferred Annuities. — (a) This section shall be known as the Standard Nonforfeiture Law for Individual Deferred Annuities.

(b) This section shall not apply to any reinsurance, group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code, as now or hereafter amended, premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced, or reversionary annuity, nor to any contract which shall be delivered outside this State through an agent or other representative of the company issuing the contract.

(c) In the case of contracts issued on or after the operative date of this section as defined in subsection (1), no contract of annuity, except as stated in subsection (b), shall be delivered or issued for delivery in this State unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the Commissioner are at least as favorable to the contract holder, upon cessation of payment of considerations under the contract.

- (1) That upon cessation of payment of considerations under a contract, the company will grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in subsections (e), (f), (g), (h) and (j).
- (2) If a contract provides for a lump sum settlement at maturity, or at any other time, that upon surrender of the contract at or prior to the commencement of any annuity payments, the company will pay in lieu of any paid-up annuity benefit a cash surrender benefit of such amount as is specified in subsections (e), (f), (h) and (j). The company shall reserve the right to defer the payment of such cash surrender benefit for a period of six months after demand therefor with surrender of the contract.
- (3) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of such benefits.
- (4) A statement that any paid-up annuity, cash surrender or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which such benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract or any prior withdrawals from or partial surrenders of the contract.

Notwithstanding the requirements of this section, any deferred annuity contract may provide that if no considerations have been received under a contract for a period of two full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid prior to such period would be less than twenty dollars (\$20.00) monthly, the company may at its option terminate contract by payment in cash of the then present value of such portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by such payment shall be relieved of any further obligation under such contract.

(d) The minimum values as specified in subsections (e), (f), (g), (h) and (j) of any paid-up annuity, cash surrender or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this section.

(1) With respect to contracts providing for flexible considerations, the minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to such time at a rate of interest of three percent (3%) per annum of percentages of the net considerations (as hereinafter defined) paid prior to such time, decreased by the sum of:

- (i) Any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of three percent (3%) per annum; and
- (ii) The amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract.

The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount not less than zero and shall be equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of thirty dollars (\$30.00) and less a collection charge of one dollar and twenty-five cents (\$1.25) per consideration credited to the contract during that contract year. The percentages of net considerations shall be sixty-five percent (65%) of the net consideration for the first contract year and eighty-seven and one-half (87 1/2%) of the net considerations for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be sixty-five percent (65%) of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net considerations in all prior contract years for which the percentage was sixty-five percent (65%).

(2) With respect to contracts providing for fixed scheduled considerations, minimum nonforfeiture amounts shall be calculated on the assumption that considerations are paid annually in advance and shall be defined as for contracts with flexible considerations which are paid annually with two exceptions:

(i) The portion of the net consideration for the first contract year to be accumulated shall be the sum of sixty-five percent (65%) of the net consideration for the first contract year plus twenty-two and one-half percent (22 1/2%) of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years.

(ii) The annual contract charge shall be the lesser of (i) thirty dollars (\$30.00) or (ii) ten percent (10%) of the gross annual considerations.

(3) With respect to contracts providing for a single consideration, minimum nonforfeiture amounts shall be defined as for contracts with flexible

considerations except that the percentage of net consideration used to determine the minimum nonforfeiture amount shall be equal to ninety percent (90%) and the net consideration shall be the gross consideration less a contract charge of seventy-five dollars (\$75.00).

(e) Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date. Such present value shall be computed using the mortality table, if any, and the interest rate specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.

(f) For contracts which provide cash surrender benefits, such cash surrender benefits available prior to maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit which would be provided under the contract at maturity arising from considerations paid prior to the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract, such present value being calculated on the basis of an interest rate not more than one percent (1%) higher than the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, decreased by the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract. In no event shall any cash surrender benefit be less than the minimum nonforfeiture amount at that time. The death benefit under such contracts shall be at least equal to the cash surrender benefit.

(g) For contracts which do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity shall not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid prior to the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity, such present value being calculated for the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, and increased by any existing additional amounts credited by the company to the contract. For contracts which do not provide any death benefits prior to the commencement of any annuity payments, such present values shall be calculated on the basis of such interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, in no event shall the present value of a paid-up annuity benefit be less than the minimum nonforfeiture amount at that time.

(h) For the purpose of determining the benefits calculated under subsections (f) and (g), in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date shall be deemed to be the latest date for which election shall be permitted by the contract, but shall not be deemed to be later than the anniversary of the contract next following the annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later.

(i) Any contract which does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount prior to the commencement of any annuity payments shall include a statement in a prominent place in the contract that such benefits are not provided.

(j) Any paid-up annuity, cash surrender or death benefits available at any time, other than on the contract anniversary under any contract with fixed scheduled considerations, shall be calculated with allowance for the lapse of time and the payment of any scheduled considerations beyond the beginning of the contract year in which cessation of payment of considerations under the contract occurs.

(k) For any contract which provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of subsections (e), (f), (g), (h) and (j), additional benefits payable (1) in the event of total and permanent disability, (2) as reversionary annuity or deferred reversionary annuity benefits, or (3) as other policy benefits additional to life insurance, endowment and annuity benefits, and considerations for all such additional benefits, shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits that may be required by this section. The inclusion of such additional benefits shall not be required in any paid-up benefits, unless such additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits.

(l) After April 19, 1979, any company may file with the Commissioner a written notice of its election to comply with the provisions of this section after a specified date before the second anniversary of the effective date of this section. After the filing of such notice, then upon such specified date, which shall be the operative date of this section for such company, this section shall become operative with respect to annuity contracts thereafter issued by such company. If a company makes no such election, the operative date of this section for such company shall be the second anniversary of the effective date of this section. (1979, c. 409, s. 11.)

**§ 58-205. Rights of beneficiaries.** — When a policy of insurance is effected by any person on his own life, or on another life in favor of some person other than himself having an insurable interest therein, the lawful beneficiary thereof, other than himself or his legal representatives, is entitled to its proceeds against the creditors and representatives of the person effecting the insurance. The person to whom a policy of life insurance is made payable may maintain an action thereon in his own name. A person may insure his or her own life for the sole use and benefit of his or her spouse, or children, or both, and upon his or her death the proceeds from the insurance shall be paid to or for the benefit of the spouse, or children, or both, or to a guardian, free from all claims of the representatives or creditors of the insured or his or her estate. Any insurance policy which insures the life of a person for the sole use and benefit of that person's spouse, or children, or both, shall not be subject to the claims of creditors of the insured during his or her lifetime, whether or not the policy reserves to the insured during his or her lifetime any or all rights provided for by the policy and whether or not the policy proceeds are payable to the estate of the insured in the event the beneficiary or beneficiaries predecease the insured. (Const., Art. X, s. 7; 1899, c. 54, s. 59; Rev., ss. 4771, 4772; C. S., s. 6464; 1977, c. 518, s. 1.)

**Editor's Note. —**

The 1977 amendment rewrote the third sentence and added the fourth sentence.

Session Laws 1977, c. 518, s. 2, provides: "This act shall become effective 30 days after certification by the State Board of Elections that an amendment to the Constitution of North

Carolina rewriting Article X, § 5, to permit a person's life to be insured for the benefit of his or her spouse or children or both, has been approved by the people of the State." Such a constitutional amendment was proposed by Session Laws 1977, c. 115, s. 1, and was approved by the voters at the election held Nov. 8, 1977.

**§ 58-205.1. Minors may enter into insurance or annuity contracts and have full rights, powers and privileges thereunder.**

**Editor's Note.** — For article, "The Contracts of Minors Viewed from the Perspective of Fair Exchange," see 50 N.C.L. Rev. 517 (1972).

**§ 58-205.2. Renunciation.** — A beneficiary of a life insurance policy who did not possess the incidents of ownership under the policy at the time of death of the insured may renounce as provided in Chapter 31B of the General Statutes. (1975, c. 371, s. 5.)

**Editor's Note.** — Session Laws 1975, c. 371, s. 6, makes the act effective Oct. 1, 1975.

**§ 58-205.3. Interest payments on death benefits.** — (a) Each insurer admitted to transact life insurance in this State which, without the written consent of the beneficiary, fails or refuses to pay the death proceeds or death benefits in accordance with the terms of any policy of life or accident insurance issued by it in this State within 30 days after receipt of satisfactory proof of loss because of the death, whether accidental or otherwise, of the insured shall pay interest, at a rate not less than the then current rate of interest on death proceeds left on deposit with the insurer computed from the date of the insured's death, on any moneys payable and unpaid after the expiration of such 30-day period.

(b) Within the meaning of this section, payment of proceeds or benefits shall be deemed to have been made on the date upon which a check, draft or other valid instrument equivalent to the payment of money was placed in the United States mails in a properly addressed, postpaid envelope, or, if not so posted, on the date of delivery of such instrument to the beneficiary.

(c) Nothing contained herein shall be construed to allow any insurer admitted to transact life insurance in this State to withhold payment of money payable under a life or accident insurance policy issued in this State to any beneficiary for a period longer than reasonably necessary to determine whether benefits are payable and thereafter to transmit such payment.

(d) This section shall not apply to policies of insurance issued prior to the effective date of this section to the extent that such policies contain specific provisions in conflict with this section. (1977, c. 395, s. 1.)

**Editor's Note.** — Session Laws 1977, c. 395, s. 2, provides that the act shall become effective 90 days after ratification. The act was ratified May 16, 1977.

**§ 58-206. Creditors deprived of benefits of life insurance policies except in cases of fraud.**

**Applied in First Nat'l Bank v. Dixon, 38 N.C. App. 430, 248 S.E.2d 416 (1978).**

**§ 58-210. "Group life insurance" defined.** — No policy of group life insurance shall be delivered in this State unless it conforms to one of the following descriptions:

(1) A policy issued to an employer, or to the trustee of a fund established by an employer, which employer or trustee shall be deemed the policyholder, to insure employees of the employer for the benefit of

- persons other than the employer subject to the following requirements:
- a. The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include the employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietors or partnerships if the business of the employer and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract, or otherwise. The policy may provide that the term "employees" shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include retired employees. The term "employer" as used herein may be deemed to include any county, municipality, or the proper officers, as such, of any unincorporated municipality or any department, division, agency, instrumentality or subdivision of a county, unincorporated municipality or municipality. In all cases where counties, municipalities or unincorporated municipalities or any officer, agent, division, subdivision or agency of the same have heretofore entered into contracts and purchased group life insurance for their employees, such transactions, contracts and insurance and the purchase of the same is hereby approved, authorized and validated.
  - b. The premium for the policy shall be paid by the policyholder, either wholly from the employer's funds or funds contributed by him, or partly from such funds and partly from funds contributed by the insured employees. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least seventy-five percent (75%) of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.
  - c. The policy must cover at least 10 employees at date of issue.
  - d. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustee.
- (2) A policy issued to a creditor, who shall be deemed the policyholder, to insure debtors of the creditor, subject to the following requirements:
- a. The debtors eligible for insurance under the policy shall be all of the debtors of the creditor whose indebtedness is repayable in installments, or all of any class or classes thereof determined by conditions pertaining to the indebtedness or to the purchase giving rise to the indebtedness. The policy may provide that the term "debtors" shall include the debtors of one or more subsidiary corporations, and the debtors of one or more affiliated corporations, proprietors or partnerships if the business of the policyholder and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract or otherwise.
  - b. The premium for the policy shall be paid by the policyholder, either from the creditor's funds, or from charges collected from the

insured debtors, or from both. A policy on which part or all of the premium is to be derived from the collection from the insured debtors or identifiable charges not required of uninsured debtors shall not include, in the class or classes of debtors eligible for insurance, debtors under obligations outstanding at its date of issue without evidence of individual insurability unless at least seventy-five percent (75%) of the then-eligible debtors elect to pay the required charges. A policy on which no part of the premium is to be derived from the collection of such identifiable charges must insure all eligible debtors, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

- c. The policy may be issued only if the group of eligible debtors is then receiving new entrants at the rate of at least 100 persons yearly, or may reasonably be expected to receive at least 100 new entrants during the first policy year, and only if the policy reserves to the insurer the right to require evidence of individual insurability if less than seventy-five percent (75%) of the new entrants become insured.

d. e. Repealed by Session Laws 1975, c. 660, s. 4.

- (3) A policy issued to a labor union, which shall be deemed the policyholder, to insure members of such union for the benefit of persons other than the union or any of its officials, representatives or agents, subject to the following requirements:

- a. The members eligible for insurance under the policy shall be all of the members of the union, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the union, or both.
- b. The premium for the policy shall be paid by the policyholder, either wholly from the union's funds, or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance. A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force only if at least seventy-five percent (75%) of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

- c. The policy must cover at least 25 members at date of issue.
- d. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the union.

- (4) A policy issued to the trustee of a fund established by two or more employers in the same industry or kind of business or by two or more labor unions, which trustee shall be deemed the policyholder, to insure employees of the employers or members of the unions for the benefit of persons other than the employers or the unions, subject to the following requirements:

- a. The persons eligible for insurance shall be all of the employees of the employers or all of the members of the unions, or all of any class or classes thereof determined by conditions pertaining to their employment, or to memberships in the unions, or to both. The policy

may provide that the term "employees" shall include the individual proprietor or partners if an employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include the trustee or the employees of the trustee, or both, if their duties are principally connected with such trusteeship. The policy may provide that the term "employees" shall include retired employees.

- b. The premium for the policy shall be paid by the trustee wholly from funds contributed by the participating employer or labor union, or partly from funds contributed by the participating employer or labor union and partly from funds contributed by the insured persons. In no event shall the funds contributed by the participating employer or labor union represent less than twenty-five percent (25%) of the total cost of the insurance with respect to the insured persons of a participating employer or labor union.

If none of the premium paid by the participating employer or labor union is to be derived from funds contributed by the insured persons specifically for the insurance, all eligible employees of that particular participating employer or labor union must be insured, or all except any as to whom evidence of insurability is not satisfactory to the insurer. Insurance may not be placed into effect for employees of a participating employer or labor union if less than twenty-five percent (25%) of the total cost is paid by the participating employer or labor union.

If part of the premium paid by the participating employer or labor union is to be derived from funds contributed by the insured persons specifically for their insurance, coverage may be placed in force on employees of a participating employer or on members of a participating labor union only if at least seventy-five percent (75%) and a minimum of five of the eligible persons in the unit subscribing to the trust, excluding any as to whom evidence of insurability is not satisfactory to the insurer, elect when enrolling to make the required contributions.

- c. The policy must cover at least 100 persons at date of issue.  
d. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder, employers, or unions.

(5) A policy issued to an association of persons having a common professional or business interest, which association shall be deemed the policyholder, to insure members of such association for the benefit of persons other than the association or any of its officials, representatives or agents, subject to the following requirements:

- a. Such association shall have had an active existence for at least two years immediately preceding the purchase of such insurance, was formed for purposes other than procuring insurance and does not derive its funds principally from contributions of insured members toward the payment of premiums for the insurance.  
b. The members eligible for insurance under the policy shall be all of the members of the association or all of any class or classes thereof determined by conditions pertaining to their employment, or the membership in the association, or both. The policy may provide that the term "members" shall include the employees of members, if their duties are principally connected with the member's business or profession.  
c. The premium for the policy shall be paid by the policyholder, either wholly from the association's funds, or partly from such funds and

partly from funds contributed by the insured members specifically for their insurance. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance, nor if the Commissioner finds that the rate of such contributions will exceed the maximum rate customarily charged employees insured under like group life insurance policies issued in accordance with the provisions of subdivision (1). A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force only if at least seventy-five percent (75%) of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

- d. The policy must cover at least 25 members at date of issue.
- e. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the association.

(6) Notwithstanding the provisions of this section, or any other provisions of law to the contrary, a policy may be issued to the employees of the State or any other political subdivision where the entire amount of premium therefor is paid by such employees. (1925, c. 58, s. 1; 1931, c. 328; 1943, c. 597, s. 1; 1947, c. 834; 1951, c. 800; 1955, c. 1280; 1957, c. 998; 1959, c. 287; 1965, c. 869; 1971, c. 516; 1973, c. 249; 1975, c. 660, s. 4; 1977, c. 192, ss. 1-4; c. 835.)

**Editor's Note. —**

The 1975 amendment, in subdivision (2), repealed paragraph d, which fixed the maximum amount of insurance to be provided on the life of any debtor, and paragraph e, which required that the insurance be payable to the policyholder, such payment to reduce the unpaid indebtedness of the debtor.

The first 1977 amendment deleted the former second sentences of subdivisions (1)d, (3)d, (4)d and (5)e. All of the deleted provisions limited the amounts of coverage in the policies authorized in the respective subdivisions.

The second 1977 amendment, in subdivision (4) reenacted paragraphs a and c without change and in paragraph b, substituted the language beginning "participating employer or labor union" for "the employers of the insured persons" at the end of the first sentence of the first paragraph, rewrote the second sentence of

that paragraph, and added the second and third paragraphs. The amendment also deleted the former second sentence of paragraph d, which prohibited the issuance of certain policies.

Session Laws 1975, c. 660, s. 3, contains a severability clause.

Session Laws 1975, c. 660, s. 5, provides: "The effective date of this act shall be 90 days after ratification. All credit life and credit accident and health insurance policies, delivered or issued for delivery on or after the effective date of this act shall conform to the provisions of this act. With regard to existing group credit insurance policies, the rates and forms shall be amended to conform to the requirements of this act, or be terminated, not later than the anniversary of the date of issue of the contract next following the effective date of this act." The act was ratified June 18, 1975.

### § 58-213. Exemption from execution.

**Applied in First Nat'l Bank v. Dixon, 38 N.C.  
App. 430, 248 S.E.2d 416 (1978).**

§§ 58-213.1 to 58-213.5: Reserved for future codification purposes.

## ARTICLE 22A.

### *Regulation of Life Insurance Solicitation.*

**§ 58-213.6. Purpose of Article.** — The purpose of this Article is to require insurers to deliver to purchasers of life insurance, information which will improve the buyer's ability to select the most appropriate plan of life insurance for their needs, improve the buyer's understanding of the basic features of the policy which has been purchased or which is under consideration and to improve the ability of the buyer to evaluate the relative costs of similar plans of life insurance.

This Article does not prohibit an insurer to use additional material which is not in violation of this Chapter nor any other statute or regulation. (1979, c. 447.)

**Editor's Note.** — Session Laws 1979, c. 447, s. 2, provides: "This act shall become effective on December 1, 1979, and shall apply to all

solicitations of life insurance occurring on or after that date."

**§ 58-213.7. Scope of Article; exemptions.** — (a) Except as hereafter exempted, this Article shall apply to any solicitation, negotiation or procurement of life insurance occurring within this State. This Article shall apply to any issuer of life insurance contract including fraternal benefit societies.

- (b) Unless otherwise specifically included, this Article shall not apply to:
- (1) Annuities,
  - (2) Credit life insurance,
  - (3) Group life insurance,
  - (4) Life insurance policies issued in connection with pension and welfare plans as defined by and which are subject to the federal Employee Retirement Income Security Act of 1974 (ERISA),
  - (5) Variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account. (1979, c. 447.)

**§ 58-213.8. Definitions.** — Unless the context of use indicates a different meaning, for the purposes of this Article, the following definitions shall apply:

- (1) **Buyer's Guide.** — A Buyer's Guide is a document furnished pursuant to G.S. 58-213.9, which shall contain all the requirements of and be in substantial compliance with G.S. 58-213.11.
- (2) **Cash Dividend.** — A Cash Dividend is the current illustrated dividend which can be applied toward payment of gross premium.
- (3) **Equivalent Level Annual Dividend.** — The Equivalent Level Annual Dividend is calculated by applying the following steps:
  - a. Accumulate the annual cash dividends at five percent (5%) interest compounded annually to the end of the 10th and 20th policy years;
  - b. Divide each accumulation of paragraph a of this subdivision by an interest factor that converts it into one equivalent level annual amount that, if paid at the beginning of each year, would accrue to the values in paragraph a of this subdivision over the respective periods stipulated in paragraph a of this subdivision. If the period is 10 years, the factor is 13.207 and if the period is 20 years, the factor is 34.719.

- c. Divide the results of paragraph b of this subdivision by the number of thousands of the Equivalent Level Death Benefit to arrive at the Equivalent Level Annual Dividend.
- (4) Equivalent Level Death Benefit. The Equivalent Level Death Benefit of a policy or term life insurance rider is an amount calculated as follows:
  - a. Accumulate the guaranteed amount payable upon death, regardless of the cause of death, at the beginning of each policy year for 10 and 20 years at five percent (5%) interest compounded annually to the end of the 10th and 20th policy years respectively;
  - b. Divide each accumulation of paragraph a of this subdivision by an interest factor that converts it into one equivalent level annual amount that, if paid at the beginning of each year, would accrue to the value in paragraph a of this subdivision over the respective periods stipulated in paragraph a of this subdivision. If the period is 10 years, the factor is 13.207 and if the period is 20 years, the factor is 34.719.
- (5) Generic Name. Generic Name means a short title which is descriptive of the premium and benefit patterns of a policy or a rider.
- (6) Life Insurance Cost Indexes.
  - a. Life Insurance Surrender Cost Index. The Life Insurance Surrender Cost Index is calculated by applying the following steps:
    1. Determine the guaranteed cash surrender value, if any, available at the end of the 10th and 20th policy years;
    2. For participating policies, add the terminal dividend payable upon surrender, if any, to the accumulation of the annual Cash Dividends at five percent (5%) interest compounded annually to the end of the period selected and add this sum to the amount determined in subparagraph a;
    3. Divide the result of subparagraph 2 (subparagraph 1 for guaranteed-cost policies) by an interest factor that converts it into an equivalent level annual that, if paid at the beginning of each year, would accrue to the value in subparagraph 2 (subparagraph 1 for guaranteed-cost policies) over the respective periods stipulated in subparagraph 1. If the period is 10 years, the factor is 13.207 and if the period is 20 years, the factor is 34.719;
    4. Determine the equivalent level premium by accumulating each annual premium payable for the basic policy or rider at five percent (5%) interest compounded annually to the end of the period stipulated in subparagraph 1 and dividing the result by the respective factors stated in subparagraph 3 (this amount is the annual premium payable for a level premium plan);
    5. Subtract the result of subparagraph 3 from subparagraph 4;
    6. Divide the result of subparagraph 5 by the number of thousands of the Equivalent Level Death Benefit to arrive at the Life Insurance Surrender Cost Index.
  - b. Life Insurance Net Payment Cost Index. The Life Insurance Net Payment Cost Index is calculated in the same manner as the comparable Life Insurance Cost Index except that the cash surrender value and any terminal dividend are set at zero.
- (7) Policy Summary. Policy Summary means a written statement describing the elements of the policy including but not limited to:
  - a. A prominently placed title in at least 10-point boldface capital letters as follows: STATEMENT OF POLICY COST AND BENEFIT INFORMATION;
  - b. The name and address of the insurance agent, or, if no agent is involved, a statement of the procedure to be followed in order to receive responses to inquiries regarding the Policy Summary;

- c. The full name and home office or administrative office address of the company in which the life insurance policy is to be or has been written;
- d. The Generic Name of the basic policy and each rider;
- e. The following amounts, where applicable, for the first five policy years and representative policy years thereafter sufficient to clearly illustrate the premium and benefit patterns, including, but not necessarily limited to, the years for which Life Insurance Cost Indexes are displayed and at least one age from 60 through 65 or maturity, whichever is earlier:
  - 1. The annual premium for the basic policy;
  - 2. The annual premium for each optional rider;
  - 3. Guaranteed amount payable upon death, at the beginning of the policy year regardless of the cause of death other than suicide, or other specifically enumerated exclusions, which is provided by the basic policy and each optional rider, with benefits provided under the basic policy and each rider shown separately;
  - 4. Total guaranteed cash surrender values at the end of the year with values shown separately for the basic policy and each rider;
  - 5. Cash Dividends payable at the end of the year with values shown separately for the basic policy and each rider. (Dividends need not be displayed beyond the 20th policy year);
  - 6. Guaranteed endowment amounts payable under the policy which are not included under guaranteed cash surrender values above.
- f. The effective policy loan annual percentage interest rate, if the policy contains this provision, specifying whether this rate is applied in advance or in arrears. If the policy loan interest rate is variable, the Policy Summary includes the maximum annual percentage rate;
- g. Life Insurance Cost Indexes for 10 and 20 years but in no case beyond the premium paying period. Separate indexes must be displayed for the basic policy and for each optional term life insurance rider. Such indexes need not be included for optional riders which are limited to benefits such as accidental death benefits, disability waiver of premium, preliminary term life insurance coverage of less than 12 months and guaranteed insurability benefits nor for basic policies or optional riders covering more than one life;
- h. The Equivalent Level Annual Dividend, in the case of participating policies and participating optional term life insurance riders, under the same circumstances and for the same durations at which Life Insurance Cost Indexes are displayed;
- i. A Policy Summary which includes dividends shall also include a statement that dividends are based on the company's current dividend scale and are not guaranteed in addition to a statement in close proximity to the Equivalent Level Annual Dividend as follows: An explanation of the intended use of the Equivalent Level Annual Dividend is included in the Life Insurance Buyer's Guide;
- j. A statement in close proximity to the Life Insurance Cost Indexes as follows: An explanation of the intended use of these indexes is provided in the Life Insurance Buyer's Guide.
- k. The date on which the Policy Summary is prepared.

The Policy Summary must consist of a separate document. All information required to be disclosed must be set out in such a manner as to not minimize or render any portion thereof obscure. Any amounts

which remain level for two or more years of the policy may be represented by a single number if it is clearly indicated what amounts are applicable for each policy year. Amounts in subparagraph e of this paragraph shall be listed in total, not on a per thousand nor per unit basis. If more than one insured is covered under one policy or rider, guaranteed death benefits shall be displayed separately for each insured or for each class of insureds if death benefits do not differ within the class. Zero amounts shall be displayed as zero and shall not be displayed as a blank space. (1979, c. 447.)

**§ 58-213.9. Disclosure requirements.** — (a) The insurer shall provide to all prospective purchasers a Buyer's Guide and a Policy Summary prior to accepting any applicant's initial premium deposit, unless the policy for which application is made contains an unconditional refund provision of at least 10 days or unless the Policy Summary contains such an unconditional refund offer, in which event the Buyer's Guide and Policy Summary must be delivered with the policy or prior to delivery of the policy.

(b) The insurer shall provide a Buyer's Guide and a Policy Summary to any prospective purchaser upon request.

(c) In the case of policies whose Equivalent Level Death Benefit does not exceed five thousand dollars (\$5,000), the requirement for providing a Policy Summary will be satisfied by delivery of a written statement containing the information described in G.S. 58-213.8, paragraphs b, c, d, e.1, e.2, e.3, f, g, j, and k. (1979, c. 447.)

**§ 58-213.10. General rules relating to solicitation.** — (a) Each insurer subject to this Article shall maintain at its home office or principal office a complete file containing one copy of each document authorized by the insurer for use pursuant to this Article. Such file shall contain one copy of each authorized form for a period of three years following the date of its last authorized use.

(b) An agent shall inform the prospective purchaser, prior to commencing a life insurance sales presentation, that he is acting as a life insurance agent and inform the prospective purchaser of the full name of the insurance company which he is representing to the buyer. In sales situations in which an agent is not involved, the insurer shall identify its full name.

(c) Terms such as financial planner, investment advisor, financial consultant, or financial counseling shall not be used in such a way as to imply that the insurance agent is generally engaged in an advisory business in which compensation is unrelated to sales unless such is actually the case.

(d) Any reference to policy dividends must include a statement that dividends are not guaranteed.

(e) A system or presentation which does not recognize the time value of money through the use of appropriate interest adjustments shall not be used for comparing the cost of two or more life insurance policies. Such a system may be used for the purpose of demonstrating the cash-flow pattern of a policy if such presentation is accompanied by a statement disclosing that the presentation does not recognize that, because of interest, a dollar in the future has less value than a dollar today.

(f) A presentation of benefits shall not display guaranteed and nonguaranteed benefits as a single sum unless they are shown separately in close proximity thereto.

(g) A statement regarding the use of the Life Insurance Cost Indexes shall include an explanation to the effect that the indexes are useful only for the comparison of the relative costs of two or more similar policies.

(h) A Life Insurance Cost Index which reflects dividends or an Equivalent Level Annual Dividend shall be accompanied by a statement that it is based on the insurer's current dividend scale and is not guaranteed.

(i) For the purposes of this Article, the annual premium for a basic policy or rider, for which the insurer reserves the right to change the premium, shall be the maximum annual premium. (1979, c. 447.)

**§ 58-213.11. Adoption of Buyer's Guide; requirements.** — Any insurer soliciting life insurance in this State on or after December 1, 1979, shall adopt and use a Buyer's Guide, and the adoption and use by an insurer of the Buyer's Guide promulgated by the National Association of Insurance Commissioners in the NAIC Model Life Insurance Solicitation Regulations shall be in compliance with the requirements of this Article. (1979, c. 447.)

**§ 58-213.12. Failure to comply.** — The failure of an insurer to provide or deliver a Buyer's Guide, or a Policy Summary as provided in G.S. 58-213.9(a) and (b) shall constitute an omission which misrepresents the benefits, advantages, conditions or terms of an insurance policy within the meaning of G.S. 58-199 and Article 3A (Unfair Trade Practice Act) of this Chapter. (1979, c. 447.)

## ARTICLE 24.

### *Mutual Burial Associations.*

**§§ 58-224 to 58-241.5:** Recodified as §§ 58-241.6 to 58-241.31, effective July 1, 1975.

**Editor's Note.** — This Article was rewritten by Session Laws 1975, c. 837, effective July 1, 1975, and has been recodified as Article 24A, § 58-241.6 et seq.

Section 58-237.2 was repealed by Session Laws 1975, c. 607.

## ARTICLE 24A.

### *Mutual Burial Associations.*

**§ 58-241.6. Mutual burial associations placed under supervision of Burial Association Commission; Commission to select Burial Association Administrator.** — All mutual burial associations now organized in the State of North Carolina, and all mutual burial associations hereafter organized and operating within said State, shall be under the general supervision of the North Carolina Mutual Burial Association Commission. The number of members composing this Commission and the manner of electing or appointing such members shall be as set out in G.S. 58-241.7.

The Commission shall maintain and operate such office facilities and shall employ such investigative, accounting, legal, secretarial and clerical employees as may be necessary for the efficient administration of the mutual burial association laws and regulations adopted pursuant thereto. The chief executive officer and administrator of such office shall be known as the Burial Association Administrator, and the office shall be known as the office of the Burial Association Administrator. All expenses of such office facilities and personnel shall be paid from funds coming to the office of the burial association pursuant to this Article and other applicable law. The Administrator shall have all powers granted to the Burial Association Administrator by this Article, all powers which

the North Carolina Mutual Burial Association Commission may lawfully grant to such Administrator and all powers necessary and incidental to the powers heretofore enumerated. The person heretofore appointed by the Governor of the State of North Carolina and serving as Burial Association Administrator on July 1, 1975, shall serve until the completion of the term for which such person was appointed. If the office of the Burial Association Administrator shall become vacant for any reason prior to the expiration of the term of the person presently holding the office, such vacancy shall be filled by the Governor of the State of North Carolina and the person thus appointed shall serve only for the remainder of the unexpired term. Thereafter, the Governor shall appoint the Burial Association Administrator upon recommendation of the Burial Association Commission. The salary of the person serving as Burial Association Administrator on July 1, 1975, and the salary of any person serving as Burial Association Administrator throughout the remainder of any term for which such present incumbent was appointed, shall be fixed by the Governor subject to the approval of the Advisory Budget Commission. Thereafter, the salary of the Burial Association Administrator shall be fixed by the North Carolina Mutual Burial Association Commission subject to the approval of the Advisory Budget Commission. The Burial Association Administrator shall give bond approved by the Commissioner of Insurance of the State of North Carolina in the sum of ten thousand dollars (\$10,000), conditioned for his faithful application of all funds coming into his hands by virtue of his office. (1941, c. 130, ss. 2, 19; 1943, c. 170; 1957, c. 541, s. 4; 1975, c. 837.)

**Editor's Note.** — This Article is Article 24 of this Chapter as rewritten by Session Laws 1975, c. 837, effective July 1, 1975, and recodified. Where appropriate, the historical citations to the

sections in the former Article have been added to corresponding sections in the Article as rewritten and recodified.

**§ 58-241.7. North Carolina Mutual Burial Association Commission; membership; election; duties.** — The North Carolina Mutual Burial Association Commission shall be composed of five members chosen as follows:

- (1) Each of the two members serving on the Commission on July 1, 1975, who was elected by the North Carolina Funeral Directors Association, the member serving on the Commission on July 1, 1975, who was elected by the Funeral Directors and Morticians Association of North Carolina and the member serving on the Commission on July 1, 1975, who was elected by the North Carolina Perpetual Care Cemetery Association shall serve until the completion of the term for which such member was elected and until the successor for such member is elected or appointed (as the case may be) and qualified.
- (2) a. A vacancy occurring in the Commission prior to January 1, 1977, because of the expiration of the term of a Commission member (other than the Commission member appointed by the Governor as hereinafter provided) shall be filled as follows: At least 90 days prior to the expiration of the term of the Commission member whose term is expiring, the North Carolina Burial Association Administrator and the president and vice-president of the North Carolina Burial Association, Incorporated, shall select the names of two persons who are mutual burial association officers. The names of the two persons so selected shall be printed on a ballot by the Administrator and one ballot mailed by him to each burial association operator in the State who is or would be eligible to join the North Carolina Burial Association, Incorporated. No burial association operator shall be entitled to more than one vote. Each operator shall vote for one name on the ballot and shall return the

ballot to the Burial Association Administrator by mail by posting the same on or before a date designated on the said ballot, which date shall be no later than 30 days prior to the expiration of the term of the Commission member for whom a successor is being elected. The name of any other nominee may be written on the ballot and space on the ballot for the writing-in of any such name shall be provided. The person receiving the highest number of votes shall be deemed elected to the Commission and shall serve for a term of five years. In case of a tie vote, the winner shall be selected by lot and shall serve for a term of five years.

- b. A vacancy occurring in the Commission after December 31, 1976, because of the expiration of the term of a Commission member (other than the Commission member appointed by the Governor as hereinafter provided) shall be filled in accordance with such rules and regulations as shall be determined by the North Carolina Burial Association, Incorporated, and as approved by the North Carolina Mutual Burial Association Commission, provided that each burial association operator in the State who is or would be eligible to join the North Carolina Burial Association, Incorporated, shall be entitled to vote and further provided that no burial association operator shall be entitled to more than one ballot.
- c. A vacancy occurring in the Commission prior to January 1, 1977, because of the resignation, death or removal for cause of a member of the Commission (other than the Commission member appointed by the Governor as hereinafter provided) shall be filled within 90 days of the occurrence of the vacancy as follows: The North Carolina Burial Association Administrator and the president and vice-president of the North Carolina Burial Association, Incorporated, shall select the names of two persons who are mutual burial association officers. The names of the persons so selected shall be printed on a ballot by the Administrator and one ballot mailed by him to each burial association operator in the State who is or would be eligible to join the North Carolina Burial Association, Incorporated. No burial association operator shall be entitled to more than one vote. Each operator shall vote for one name on the ballot and shall return the ballot to the Burial Association Administrator by mail by posting the same on or before a date set forth in the said ballot. The name of any other nominee may be written on the ballot and space on the ballot for the writing-in of any such name shall be provided. The person receiving the highest number of votes shall be deemed elected to the Commission and shall serve for the remainder of the unexpired term to which such person was elected. In case of a tie vote, the winner shall be selected by lot and shall serve for the remainder of the unexpired term to which such person was elected.
- d. A vacancy occurring in the Commission after December 31, 1976, because of the resignation, death or removal for cause of a member of the Commission (other than the Commission member appointed by the Governor as hereinafter provided) shall be filled within 90 days of the date of the occurrence of the vacancy in accordance with such rules and regulations as shall be determined by the North Carolina Burial Association, Incorporated, and as approved by the North Carolina Mutual Burial Association Commission, provided that each burial association operator in the State who is or would be eligible to join the North Carolina Burial Association, Incorporated, shall be entitled to vote and further provided that no burial association operator shall be entitled to more than one ballot.

- (3) In the event that the North Carolina Burial Association, Incorporated, shall fail to select, within the time provided herein, a person to fill a vacancy on the Commission, whether the said vacancy shall have occurred by reason of expiration of term, resignation, death or otherwise, the Burial Association Administrator may declare the seat vacant and appoint any eligible person or persons to serve the term of the vacant seat.
- (4) Not more than three members of the Commission who shall have been elected or appointed thereto, as the case may be, in accordance with the provisions of subdivision (2) or subdivision (3) shall be of the same race.
- (5) The member serving on the Commission on July 1, 1975, who was appointed by the Governor shall continue to serve until the completion of the term for which such member was appointed and until the successor for such member is appointed and qualified. This membership on the Commission shall continue to be filled by appointment by the Governor and each such subsequent appointment shall be for a term of five years. The member appointed by the Governor shall be a citizen of the State of North Carolina. In the event that this position on the Commission should become vacant by resignation, death or otherwise, a successor to serve for the unexpired term shall be appointed by the Governor within 90 days of the date of the vacancy.
- (6) Any member of the Commission elected or appointed, as the case may be, in accordance with the provisions of either subdivision (2), (3) or (4) shall serve to the end of the term for which such member was elected or appointed, as the case may be, and until such member's successor shall have been elected or appointed, as the case may be, and qualified.
- (7) No member of the Commission shall be allowed to serve for two successive full terms, but this shall not prevent a member elected or appointed to complete an unexpired term, which unexpired term is less than a full five years, from being elected to one successive full five-year term.
- (8) All members of the Commission before assuming the duties of their office shall take an oath for the faithful performance of their duties. (1967, c. 1197, s. 1; 1975, c. 837.)

**§ 58-241.8. Duties of Commission; meetings; Burial Administrator; secretary.** — It shall be the duty of the North Carolina Mutual Burial Association Commission to supervise, pursuant to this Article, all burial associations authorized by this Article to operate in North Carolina, to determine that such associations are operated in conformity with this Article and the rules and regulations adopted pursuant to this Article; to assist the Burial Association Administrator with prosecution of violations of this Article or rules and regulations adopted pursuant thereto; to counsel with and advise the Burial Association Administrator in the performance of his duties and to protect the interest of members of mutual burial associations.

The North Carolina Mutual Burial Association Commission, after a public hearing, may promulgate reasonable rules and regulations for the enforcement of this Article and in order to carry out the intent thereof. The Commission is authorized and directed to adopt specific rules and regulations to provide for the orderly transfer of a member's benefits in cash or merchandise and services from the funeral director sponsoring the member's association to the funeral establishment which furnishes a funeral service, or merchandise, or both, for the burial of the member, provided that any funeral establishment to which the member's benefits are transferred in accordance with such rules and regulations shall, if located in North Carolina, be a funeral establishment registered under the provisions of G.S. 90-210.17 or shall, if located in any other state, territory

or foreign country, be a funeral establishment recognized by and operating in conformity with the laws of such other state, territory or foreign country. One or more burial associations operating in North Carolina may merge into another burial association operating in North Carolina and two or more burial associations operating in North Carolina may consolidate into a new burial association provided that any such plan of merger or plan of consolidation shall be adopted and carried out in accordance with rules and regulations adopted by the Commission pursuant to this Article.

All rules and regulations heretofore adopted by the Burial Association Administrator in accordance with prior law and which have not been amended, rescinded, revoked or otherwise changed, or which have not been nullified or made inoperative or unenforceable because of any statute enacted after the adoption of any such rule, shall remain in full force and effect until amended, rescinded, revoked or otherwise changed by action of the Burial Association Commission as set out above, or until nullified or made inoperative or unenforceable because of statutory enactment or court decision.

The Commission shall elect its own chairman, who shall vote only when the Commission is evenly divided.

The Commission shall hold regular meetings at least twice each year, and more often if called by the chairman in Raleigh, or such place in North Carolina as the chairman may direct. Special meetings of the Commission may also be called in Raleigh or such other place in North Carolina as they may direct, by a majority of the Commission.

The Burial Association Administrator shall serve as secretary of the Commission and shall keep minutes of all regular and special meetings.

All regular or special meetings of the Commission, unless a majority of the members of the Commission vote otherwise, shall be open to the public. All regular meetings shall be advertised in at least three newspapers having intercounty circulation in North Carolina.

Members of the Commission shall receive, when attending such regular or special meetings such per diem, expense allowance and travel allowance as are allowed other commissions and boards of the State. The legal adviser to the Commission shall be entitled to actual expenses when attending regular or special meetings of the Commission held other than in Raleigh. All expenses of the Commission shall be paid from funds coming to the Administrator pursuant to this Article. (1967, c. 1197, s. 2; 1971, c. 1151; 1973, c. 1147, s. 1; 1975, c. 837.)

**Editor's Note.** — The Article containing § 90-210.17, referred to in this section, was rewritten by Session Laws 1975, c. 571, and

recodified as § 90-210.18 et seq. For present provisions as to permits to operate funeral establishments, see § 90-210.25.

**§ 58-241.9. Requirements as to rules and bylaws.** — All burial associations now operating within the State of North Carolina, and all burial associations hereafter organized and operating within the State of North Carolina shall have and maintain rules and bylaws embodying the following:

Article 1. The name of this association shall be . . . . . , which shall indicate that said association is a mutual burial association.

Article 2. The objects and purposes for which this association is formed and the purposes for which it has been organized, and the methods and plan of operation of this association shall be to provide a plan for each member of this association for the payment of one funeral benefit for each member, which benefit shall consist of a funeral in cash or merchandise and service, with no free embalming or free ambulance service included in such benefits. No other free service or any other thing free shall be held out, promised or furnished, in any case. Such funeral benefit shall be in the amount of one hundred dollars (\$100.00) of cash or merchandise and service, without free embalming or free ambulance

service, for persons of the age of 10 years and over, or in the amount of fifty dollars (\$50.00) for persons under the age of 10 years; provided, however, that any member of this association of the age of 10 years or more may purchase a double benefit (for a total benefit of two hundred dollars (\$200.00)), and provided further, however, that any member of this association under the age of 10 years may purchase a double benefit (for a total benefit of one hundred dollars (\$100.00)) or a quadruple benefit (for a total benefit of two hundred dollars (\$200.00)); however, any additional benefit (as set out herein) shall be based on the assessment rate, as provided in Article 6 of this section, at the attained age of applicant at the time the additional benefit takes effect. The purchase of an additional benefit shall not be available to any member who cannot fulfill the requirements as set forth in Article 3 of this section.

Article 3. Any person who has passed his or her first birthday, and who has not passed his or her sixty-fifth birthday, and who is in good health and not under treatment of any physician, nor confined in any institution for the treatment of mental or other disease, may become a member of this burial association by the payment by such person, or for such person, of a membership fee in accordance with the provisions of this Article and the first assessment due on the membership issued for such member in accordance with the provisions of Article 6 herein. The membership fee for any person joining prior to July 1, 1975, is twenty-five cents (25¢). The membership fee of any person joining after July 1, 1975, is twenty-five cents (25¢) for each one hundred dollars (\$100.00) of benefits provided in such membership, with a minimum membership fee of twenty-five cents (25¢). The payment of the membership fee, without the payment of the first quarterly assessment due on the membership, shall not authorize the issuance of a certificate of membership in this burial association, and a certificate of membership for such person shall not be issued until the first such assessment is paid. Any member of this association joining after July 1, 1975, and who shall thereafter purchase an increased benefit shall pay an additional membership fee in accordance with this Article so that the total membership fee paid by such person shall equal twenty-five [cents] (25¢) for each one hundred dollars (\$100.00) of benefits in such member's membership; provided, that any member with a fifty-dollar (\$50.00) benefit who increases his benefit from fifty dollars (\$50.00) to one hundred dollars (\$100.00) shall not be required to pay any additional membership fee. The payment of any additional membership fee, without the payment of the first additional assessment due for the increased benefit, shall not make such member eligible for any additional benefit, and such member shall not be eligible for any additional benefit until the first such additional assessment due for such additional benefit is paid. Notwithstanding the foregoing, the provisions of the last paragraph of Article 6, hereinafter set out, shall control the increase of benefits from fifty dollars (\$50.00) to one hundred dollars (\$100.00) for any member of this association joining under the age of 10 whose benefits in force upon such member attaining his or her tenth birthday are in the amount of fifty dollars (\$50.00).

Applicant's birthday must be written in the application and subject to verification by any record the Burial Association Administrator may deem necessary to prove or establish a true date of the birth of any applicant.

Article 4. The annual meeting of the association shall be held at . . . . . (here insert the place, date and hour); each member shall have one vote at said annual meeting and 15 members of the association shall constitute a quorum. There shall be elected at the annual meeting of said association a board of directors of seven members, each of whom shall serve for a period of from one to five years as the membership may determine and until his or her successor shall have been elected and qualified. Any member of the board of directors who shall fail to maintain his or her membership, as provided in the rules and bylaws of said association, shall cease to be a member of the board of directors and a director shall be appointed by the president of said association for the unexpired

term of such disqualified member. There shall be at least an annual meeting of the board of directors, and such meeting shall be held immediately following the annual meeting of the membership of the association. The directors of the association may, by a majority vote, hold other meetings of which notice shall be given to each member by mailing such notice five days before the meeting to be held. At the annual meetings of the directors of the association, the board of directors shall elect a president, a vice-president, and a secretary-treasurer. The president and vice-president shall be elected from among the directors, but the secretary-treasurer may be selected from the director membership or from the membership of the association, it being provided that it is not necessary that the secretary-treasurer shall be a member of the board of directors. Among other duties that the secretary-treasurer may perform, he shall be chargeable with keeping an accurate and faithful roll of the membership of this association at all times and he shall be chargeable with the duty of faithfully preserving and faithfully applying all moneys coming into his hands by virtue of his said office. The president, vice-president and secretary-treasurer shall constitute a board of control who shall direct the affairs of the association in accordance with these Articles and bylaws of the association, and subject to such modification as may be made or authorized by an act of the General Assembly. The secretary-treasurer shall keep a record of all assessments made, dues collected and benefits paid. The books of the association, together with all records and bank accounts shall be at all times open to the inspection of the Burial Association Administrator or his duly constituted auditors or representatives. It shall be the duty of the secretary or secretary-treasurer of each association to keep the books of the association posted up-to-date so that the financial standing of the association may be readily ascertained by the Burial Association Administrator or any auditor or representative employed by him. Upon the failure of any secretary or secretary-treasurer to comply with this provision, it shall be the duty of the Burial Association Administrator to take charge of the books of the association and do whatever work is necessary to bring the books up-to-date. The actual costs of said work may be charged the burial association and shall be paid from the thirty percent (30%) allowed by law for the operation of the burial association.

Whenever in the opinion of the Burial Association Administrator, it is necessary to audit the books of any burial association more than once in any calendar year, the Burial Association Commission shall have authority to assess such burial association the actual cost of any audit in excess of one per calendar year, provided that no more than one audit may be deemed necessary unless a discrepancy exists at the last regular audit. Such cost shall be paid from the thirty percent (30%) allowed by law for the operation of the burial association.

Every burial association shall file with the North Carolina Mutual Burial Association Commission an annual report of its financial condition on a form furnished to it by the North Carolina Burial Association Administrator. Such report shall be filed on or before February 15 of each calendar year and shall cover the complete financial condition of the burial association for the immediate preceding calendar year. The Burial Association Commission shall levy and collect a penalty of twenty-five dollars (\$25.00) for each day after February 15 that the report called for herein is not filed. The Commission may, in its discretion, grant any reasonable extension of the above filing date without the penalty provided in this section. Such penalty shall be paid from the thirty percent (30%) allowed by law for the operation of the burial association. Any secretary or secretary-treasurer who fails to file such financial report on or before February 15 of each calendar year or on or before the last day of any period of extension for the filing of such report granted by the Commission to the burial association of such secretary or secretary-treasurer shall be guilty of a misdemeanor and shall be punished by a fine of not in excess of one hundred dollars (\$100.00) and imprisoned for not in excess of 30 days, or both fined and

imprisoned. Each day after February 15, or the last day of any period of extension for the filing of the report granted by the Commission to the burial association of such secretary or secretary-treasurer, that said report is not filed by the secretary or secretary-treasurer of a burial association, shall constitute a separate offense.

Article 5. Upon the death of any officer, his successor shall be elected by the board of directors for the unexpired term. The president, vice-president and secretary-treasurer shall be elected for a term of from one to five years, and shall hold office until his successor is elected and qualified, subject to the power of the board of directors to remove any officer for good cause shown; provided, that any officer removed by the board of directors shall have the right of appeal to the membership of the association, such appeal to be heard at the next ensuing annual meeting of said membership.

Article 6. Each member shall be assessed according to the following schedule for the benefit indicated (or in multiples thereof for additional benefit) at the age of entry of the member.

#### ASSESSMENT RATE FOR AGE GROUPS:

First to tenth birthday (\$50.00) benefit	five cents (5¢)
Tenth to thirtieth birthday (\$100.00) benefit	ten cents (10¢)
Thirtieth to fiftieth birthday (\$100.00) benefit	twenty cents (20¢)
Fiftieth to sixty-fifth birthday (\$100.00) benefit	thirty cents (30¢)

(Ages shall be defined as having passed a certain birthday instead of nearest birthday.) Assessment shall always be made on the entire membership in good standing.

Any member joining under the age of 10 shall, upon attaining his or her tenth birthday, pay thereafter the assessment for a member age 10 as set out above.

Any member joining under the age of 10 whose benefits in force upon such member attaining his or her tenth birthday are in the amount of fifty dollars (\$50.00) shall, if such member is in good standing upon attaining his or her tenth birthday, thereafter have benefits in force in the amount of one hundred dollars (\$100.00) without the necessity of making application for such increased benefit. Assessments made thereafter for such member shall be the same as an assessment for a member age 10 as set out above. Such one-hundred-dollar (\$100.00) benefit shall be in full force and effect for any such member in good standing immediately upon such member attaining his or her tenth birthday even though the increased assessment provided for herein shall not yet be due and payable, it being the intent of this Article that, notwithstanding any other provisions in these Articles, any member in good standing with a fifty-dollar (\$50.00) benefit shall immediately upon attainment of his or her tenth birthday have a one-hundred dollar (\$100.00) benefit in force whether or not the increased assessment is then due and payable by such member in accordance with the assessment period of this association.

Article 7. No benefit will be paid for natural death occurring within 30 days from the date of the certificate of membership, which certificate shall express the true date such person becomes a member of this association, and the certificate issued shall be in acknowledgment of membership in this association. Benefits will be paid for death caused by accidental means occurring any time after date of membership certificate. No benefits will be paid in case of suicidal death of any member within one year from the date of the membership

certificate. No agent or other person shall have authority to issue membership certificates in the field, but such membership certificates shall be issued at the home office of the association by duly authorized officers: the president, vice-president or secretary, and a record thereof duly made.

Article 8. Any member failing to pay any assessment within 30 days after notice shall be in bad standing, and unless and until restored, shall not be entitled to benefits. Notice shall be presumed duly given when mailed, postage paid, to the last known address of such members: Provided, moreover, that notice to the head of a family shall be construed as notice to the entire membership of such family in said association. Any member or head of a family changing his or her address shall give notice to the secretary-treasurer in writing of such change, giving the old address as well as the new, and the head of a family notifying the secretary-treasurer of change in address shall list with the secretary in such notice all the members of his or her family having membership in said association. Any member in bad standing may, within 90 days after the date of an assessment notice, be reinstated to good standing by the payment of all delinquent dues and assessments: Provided such person shall at the same time submit to the secretary-treasurer satisfactory evidence of good health, in writing, and no benefit will be paid for natural death occurring within 30 days after reinstatement. In case of death caused by accidental means, benefit will be in force immediately after reinstatement. Any person desiring to discontinue his membership for any reason shall communicate such desire to the secretary-treasurer immediately and surrender his or her certificate of membership. Any adult member who is the head of a family and who, with his family, has become in bad standing, shall furnish to the secretary-treasurer satisfactory evidence of the good health of each member desired to be reinstated in writing.

Article 9. The benefits herein provided are for the purpose of furnishing a funeral and burial benefit, in cash or merchandise and service, for a deceased member. The funeral and burial benefit, if furnished in merchandise and service, shall be in keeping with and similar to the merchandise and service sold and furnished at the same price by reputable funeral directors of this or other like communities.

Article 10. It is understood and stipulated that the benefits provided for shall be payable only to a funeral establishment which provides a funeral service for a deceased member and which, if located in North Carolina, is a funeral establishment registered under the provisions of G.S. 90-210.17 or which, if located in any other state, territory or foreign country, is a funeral establishment recognized by and operating in conformity with the laws of such other state, territory or foreign country. Upon the death of any member, it shall be the duty of the person or persons making the funeral arrangements for such deceased member to notify the secretary of the member's burial association of the death of such member. The person or persons making the funeral arrangements for such deceased member shall have 30 days from the date of the death of such member in which to make demand upon the burial association for the funeral benefits to which such member is entitled.

The benefits provided for are to be paid by the burial association to the funeral director providing such funeral and burial service either in cash or in merchandise and service as elected by the person or persons making the funeral arrangements for such deceased member. If the burial association shall fail, on demand, to provide the benefits to which the deceased member was entitled to the funeral establishment which provided the funeral service for the deceased member, then the benefits shall be paid in cash to the representative of the deceased member qualified under law to receive such benefits.

Article 11. Assessments shall be made as provided in [G.S. 58-241.24]. Whenever possible, assessments will be made at definitely stated intervals so as to reduce the cost of collection and to prevent lapse.

Article 12. In the event the proceeds of the annual assessments imposed on the entire membership for one year, as provided in [G.S. 58-241.24], do not prove sufficient at any time to yield the benefit provided for in these bylaws, then the secretary-treasurer shall notify the North Carolina Burial Association Administrator who shall be authorized, unless the membership is increased to that point where such assessments are sufficient, to cause liquidation of said association, and may transfer all members in good standing to a like organization or association.

Article 13 (a). All legitimate operating expenses of the association shall be paid out of the assessments, but in no case shall the entire expenses exceed thirty percent (30%) of the total of the assessments collected and the investment income of the burial association in one calendar year.

(b) Each burial association shall establish and maintain a reserve account for the payment of member's benefits. On the thirty-first day of December following July 1, 1975, each burial association shall transfer to such burial association's reserve account established in accordance with this Article all funds which such burial association is maintaining on that date in an account designated by such burial association as either a surplus account or a reserve account. Thereafter, beginning on January 1, 1976, each burial association shall place in such reserve account five percent (5%) of the assessments collected from and after that date and five percent (5%) of the investment income of the association earned from and after that date. These sums shall continue to be placed in the association's reserve account until the association's reserve account shall equal twenty-one dollars (\$21.00) per member. Thereafter if the reserve account shall fall below twenty-one dollars (\$21.00) per member, such sums shall again be deposited in the account until such time as the reserve account shall again be equal to twenty-one dollars (\$21.00) per member. If the reserve account shall at any time exceed twenty-one dollars (\$21.00) per member, amounts in excess of twenty-one dollars (\$21.00) per member may be withdrawn from the reserve account.

Article 14. Special meetings of the association membership may be called by the secretary-treasurer when by him deemed necessary or advisable, and he shall call a meeting when petitioned to do so by sixty-six and two-thirds percent ( $66 \frac{2}{3}\%$ ) of the members of said association who are in good standing.

Article 15. The secretary-treasurer shall, upon satisfactory evidence that membership was granted to any person not qualified at the time of entry as provided under Article 3 of these bylaws, refund any amounts paid as assessment, and shall remove the name from the membership roll.

Article 16. Any member may pay any number of assessments in advance, in which case such member will not be further assessed until a like number of assessments shall have been levied against the remaining membership.

Article 17. No person may maintain active membership in two or more separate burial associations. Any person who is found to have membership in two or more separate burial associations shall forfeit all benefits and fees paid in all associations of which he is a member except in the association which he first joined and of which he is still then a member. A person is not a member of an association for purposes of this Article if he has discontinued his membership in such association or if such association has been placed in liquidation.

Article 18. Each year, before the annual meeting of the membership of this association, the association shall cause to be published in a newspaper of general circulation in the county in which such association has its principal place of business, or shall cause to be mailed to each member in good standing a statement showing total income collected, expenses paid and burial benefits provided for by such association during the next preceding year.

Article 19. These rules and bylaws shall not be modified, canceled or abridged by any association or other authority except by act of the General Assembly of North Carolina. (1941, c. 130, s. 4; 1943, c. 272, ss. 1, 2; 1945, c. 125, s. 1; 1947, c. 100, s. 1; 1949, c. 201, ss. 1, 2; 1953, c. 1201; 1955, c. 259, ss. 3, 4; 1967, c. 1197, s. 4; 1969, c. 1041, ss. 2, 3; 1973, c. 688; 1975, c. 837; 1977, c. 748, ss. 1, 2, 6.)

**Editor's Note.** — The 1977 amendment, in Article 4, substituted "once" for "three times," "one per calendar year" for "three per calendar year," and "one audit" for "three audits" in the first sentence of the second paragraph. In Article 10, the amendment deleted "before funeral arrangements are made" from the end of the second sentence of the first paragraph and deleted "Provided, however, that if the person or persons making the funeral arrangements for such deceased member have no knowledge of the deceased person's membership in such burial association, then" from the beginning of the third sentence of the first paragraph. In Article 13(b), the amendment

deleted "plus any amount of the thirty percent (30%) allowed from and after that date for operating expenses as set forth in paragraph (a) above and not actually expended in the year allowed" at the end of the third sentence.

The bracketed references to § 58-241.24 in Articles 11 and 12 of this section as set out above have been substituted by the editors for obviously incorrect references to a nonexistent section in Session Laws 1975, c. 837.

The Article containing § 90-210.17, referred to in this section, was rewritten by Session Laws 1975, c. 571, and recodified as § 90-210.18 et seq. For present provisions as to permits to operate funeral establishments, see § 90-210.25.

**§ 58-241.10. Limitation of soliciting agents; licensing and qualifications; officers exempt from license; issuance of membership certificates.** — Each burial association shall have for each funeral home sponsoring the said burial association not more than five agents or representatives soliciting members other than the secretary-treasurer and president, and before any agent or representative shall or may represent any burial association in North Carolina, he or she shall first apply to the Burial Association Administrator of North Carolina for a license, and the Burial Association Administrator shall have full power and authority to issue such license upon proof satisfactory to such Administrator that such person is capable of soliciting burial association memberships, is of good moral character and recommended by the association in behalf of which such membership solicitations are to be made. The Burial Association Administrator may reject the application of any person who does not meet the requirements as to capacity and moral fitness. The Burial Association Administrator may, upon proof satisfactory to him that said licensed agent has violated any section of this law, revoke said license. Upon the issuing of a license to solicit membership in any burial association, such person shall be required to pay in cash, at the time of issuing license to such applicant, to the Burial Association Administrator, the sum of five dollars (\$5.00); moneys derived from this fee or charge, are to be and remain in the department or office of such Burial Association Administrator, for supervision of burial associations in this State, subject to withdrawal for expenses of supervision by authority of the Burial Association Administrator. It shall not be necessary that the president or secretary-treasurer of any burial association obtain a license for soliciting membership in the association of which such person is president or secretary-treasurer. Membership certificates shall not be issued by a solicitor in the field, but shall be reported to the office of the association and there issued and a record made of such issuance at the time such certificate is so issued. (1941, c. 130, s. 5; 1945, c. 125, s. 2; 1947, c. 100, s. 2; 1949, c. 201, s. 3; 1975, c. 837.)

**§ 58-241.11. Assessments against association for expenses of Burial Association Administrator.** — In order to meet the expenses of the supervision of the burial associations, the North Carolina Mutual Burial Association Commission shall prepare an annual budget for the office of the Burial Association Administrator. This budget shall be submitted to and shall be subject to approval by the Advisory Budget Commission. Thereafter, the Burial Association Administrator shall assess each burial association fifty dollars (\$50.00) and shall pro rate the remaining amount of this budget, over and above any other funds made available to him for this purpose, and assess each association on a pro rata basis in accordance with the number of members of each association. Each burial association shall remit to the Burial Association

Administrator its pro rata part of the total assessment, which expense shall be included in the thirty per centum (30%) expense allowance as provided in Article 13 of [G.S. 58-241.9]. This assessment shall be made on the first day of July of each and every year and said assessment shall be paid within 30 days thereafter. If any association shall fail or refuse to pay such assessment within 30 days, the Burial Association Administrator is authorized to transfer all memberships and assets of every kind and description to the nearest association that is found by the Burial Association Administrator to be in good sound financial condition. (1941, c. 130, s. 6; 1943, c. 272, s. 3; 1945, c. 125, s. 3; 1947, c. 100, s. 3; 1949, c. 201, s. 4; 1951, c. 901, s. 1; 1955, c. 259, ss. 1, 2; 1967, c. 985, s. 1; 1969, c. 1006, s. 2; 1973, c. 1476, s. 1; 1975, c. 837; 1977, c. 748, s. 3.)

**Editor's Note.** — The 1977 amendment rewrote the third sentence.

The bracketed reference to § 58-241.9 in this section as set out above has been substituted by

the editors for an obviously incorrect reference in Session Laws 1975, c. 837, to the section codified herein as § 58-241.10.

#### **§ 58-241.12. Unlawful to operate without written authority of Commission.**

— It shall be unlawful for any person, firm or corporation, association or organization to organize, operate, or in any way solicit members for a burial association, or for participation in any plan, scheme, or device similar to burial associations, without the written authority of the North Carolina Mutual Burial Association Commission, and any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than two hundred fifty dollars (\$250.00) or imprisoned not less than 12 months, or both, in the discretion of the court; provided, however, the Burial Association Commission shall not withhold authority for the organization or operation of a bona fide burial association, meeting the requirements of this Article, unless it shall be found and established to the satisfaction of the Burial Association Commission that the person or persons applying for authority to organize and operate such bona fide burial association is disqualified or does not meet the requirements of this Article. (1941, c. 130, s. 7; 1975, c. 837.)

**§ 58-241.13. Revocation of license.** — In the event it is proven to the satisfaction of the Burial Association Administrator that any burial association is being operated not in conformity with any provision of this Article, then it shall become the duty of the Burial Association Administrator upon hearing to revoke the license of said burial association and transfer said burial association, its membership and all its assets of every kind and description to another burial association that is found by the Burial Association Administrator to be in good sound financial condition; provided, that if said burial association gives notice of appeal as provided for in [G.S. 58-241.22], then said burial association may continue to operate as before the revocation and until final adjudication. (1945, c. 125, s. 4; 1975, c. 837.)

**Editor's Note.** — The bracketed reference to § 58-241.22 in this section as set out above has been substituted by the editors for an obviously

incorrect reference in Session Laws 1975, c. 837, to the section codified herein as § 58-241.23.

#### **§ 58-241.14. Deposit or investment of funds of mutual burial associations.**

— Funds belonging to each mutual burial association over and above the amount determined by the Burial Association Administrator to be necessary for operating capital shall be invested in:

- (1) Deposits in any bank or trust company in this State.
- (2) Obligations of the United States of America.
- (3) Obligations of any agency or instrumentality of the United States of America if the payment of interest and principal of such obligations is fully guaranteed by the United States of America.
- (4) Obligations of the State of North Carolina.
- (5) Bonds and notes of any North Carolina local government or public authority, subject to such restrictions as the Burial Association Commission may impose.
- (6) Shares of or deposits in any savings and loan association organized under the laws of this State and shares of or deposits in any federal savings and loan association having its principal office in this State, provided that any such savings and loan association is insured by the United States of America or any agency thereof or by any mutual deposit guaranty association authorized by the Commissioner of Insurance of North Carolina to do business in North Carolina pursuant to Article 7A of Chapter 54 of the General Statutes.
- (7) Obligations of the Federal Intermediate Credit Banks, the Federal Home Loan Banks, the Federal National Mortgage Association, the Banks for Cooperatives, and the Federal Land Banks, maturing no later than 18 months after the date of purchase.

Violation of the provisions of this section shall, after hearing, be cause for revocation or suspension of license to operate a mutual burial association. (1957, c. 820, s. 1; 1975, c. 837.)

**§ 58-241.15. Unclaimed funds of defunct burial association.** — Any funds on deposit in any bank or other financial institution in this State in the name of any burial association that is no longer in operation and has no members shall be transferred to the office of the State Burial Administrator for the operation of such office and the purposes provided in G.S. 58-241.12. (1969, c. 1083; 1975, c. 837.)

**§ 58-241.16. Penalty for failure to operate in substantial compliance with bylaws.** — If any burial association or other organization or official thereof, or any person operates or allows to be operated a burial association on any plan, scheme or bylaws not in substantial compliance with the bylaws set forth in [G.S. 58-241.9], the Burial Association Administrator may revoke any authority or license granted for the operation of such burial association, and any person, firm or corporation or association convicted of the violation of this section shall be guilty of a misdemeanor and shall be fined not less than two hundred fifty dollars (\$250.00) or imprisoned not less than one year in jail, or both, in the discretion of the court. (1941, c. 130, s. 8; 1975, c. 837.)

**Editor's Note.** — The bracketed reference to § 58-241.9 in this section as set out above has been substituted by the editors for an obviously

incorrect reference in Session Laws 1975, c. 837, to the section codified herein as § 58-241.10.

**§ 58-241.17. Penalty for wrongfully inducing person to change membership.** — Any burial association official, agent or representative thereof or any person who shall use fraud or make any promise not part of the printed bylaws, or who shall offer any rebate, gratuity or refund to cause a member of one association to change membership to another association, shall be guilty of a misdemeanor and upon conviction shall be fined not less than two hundred fifty dollars (\$250.00) or imprisoned not less than one year in jail, or both, in the discretion of the court. (1941, c. 130, s. 9; 1975, c. 837.)

**§ 58-241.18. Penalty for making false and fraudulent entries.** — Any person or burial association official who makes or allows to be made any false entry on the books of the association with intent to deceive or defraud any member thereof, or with intent to conceal from the Burial Association Administrator or his deputy or agent, or any auditor authorized to examine the books of such association, under the supervision of the Burial Association Administrator, shall be guilty of a misdemeanor and upon conviction shall be fined not less than two hundred fifty dollars (\$250.00), or imprisoned in the common jail for not less than 12 months, or both, in the discretion of the court. (1941, c. 130, s. 10; 1945, c. 125, s. 5; 1975, c. 837.)

**§ 58-241.19. Accepting applications without collecting fee and first assessment.** — Any burial association official, agent or representative, or any other person who shall accept any application for membership in any association without collecting the membership fee and first assessment due thereon from any such person making such an application for membership, shall be guilty of a misdemeanor and upon conviction shall be fined not less than two hundred fifty dollars (\$250.00), or imprisoned not less than 12 months, or both, in the discretion of the court.

Any burial association official, agent or representative, or any other person who shall accept an application for an additional benefit from a member of a burial association without collecting the additional membership fee and the additional assessment due thereon from any such person making such an application for an additional benefit shall be guilty of a misdemeanor and upon conviction shall be fined not less than two hundred fifty dollars (\$250.00), or imprisoned not less than 12 months, or both, in the discretion of the court. (1941, c. 130, s. 11; 1975, c. 837.)

**§ 58-241.20. Removal of secretary-treasurer for failure to maintain proper records.** — Any burial association secretary-treasurer who fails to maintain records to the minimum standards required by the Burial Association Administrator shall be by such Administrator removed from office and another elected in his stead, such election to be immediate and by the board of directors of said burial association upon notice of such removal. (1941, c. 130, s. 12; 1975, c. 837.)

**§ 58-241.21. Free services; failure to make proper assessments, etc., made a misdemeanor.** — Any person or persons who offer free funeral services or free embalming, free ambulance service or any other thing free of charge, acting for any burial association, directly or indirectly, or who so acting shall in any way fail to assess for the amount needed to pay death losses and allowable expenses, shall be guilty of a misdemeanor and upon conviction shall be fined not less than two hundred fifty dollars (\$250.00) or imprisoned for not less than 12 months, or both, in the discretion of the court. (1941, c. 130, s. 13; 1967, c. 1197, s. 5; 1975, c. 837.)

**§ 58-241.22. Right of appeal upon revocation or suspension of license.** — Upon the revocation or suspension of any license or authority by the North Carolina Burial Association Administrator, under any of the provisions of this Article, the said association or individual whose license or authority has been revoked or suspended shall have the right of appeal from the action of the Burial Association Administrator in revoking or suspending such license or authority to the Superior Court of Wake County or to the superior court of the county in which the said association or the said individual is domiciled or, upon agreement of the parties to the appeal, to any other superior court of the State. The association or individual appealing from the order of the Burial Association

Administrator shall give notice of appeal in writing to the Burial Association Administrator, with a copy of such notice to the clerk of the superior court to which the appeal is taken, within 10 days of the date of notice of the order revoking or suspending the said license or authority and shall pay such appeal fees to the clerk of superior court as are required by law. Within 30 days after receipt of the notice of appeal, the Burial Association Administrator shall file with the clerk of the superior court of the county in which the appeal is to be heard the decision of the Burial Association Administrator. Upon receipt of such decision, the clerk of superior court shall place the matter upon the civil issue docket of the superior court and the same shall be heard de novo. Pending such appeal, the burial association or individual whose license or authority has been suspended or revoked shall continue to operate or function as before the revocation or suspension and until final adjudication by the superior court. (1941, c. 130, s. 14; 1943, c. 272, s. 4; 1957, c. 820, s. 3; 1973, c. 108, s. 20; 1975, c. 837.)

**§ 58-241.23. Bond of secretary or secretary-treasurer of burial associations.** — The secretary or secretary-treasurer of each burial association shall, before entering upon the duties of his office, and for the faithful performance thereof, execute a bond payable to the Burial Association Administrator as trustee for the burial association in some bonding company licensed to do business in this State, to be approved by the Burial Association Administrator. Said bond shall be in an amount not less than one thousand dollars (\$1,000), nor more than ten thousand dollars (\$10,000), in the discretion of the Administrator, for those associations whose assets, as determined by the Administrator's audit, are ten thousand dollars (\$10,000) or less. For those associations whose assets, as determined by the Administrator's audit, are in excess of ten thousand dollars (\$10,000), said bond shall be in an amount of ten thousand dollars (\$10,000) plus twenty-five per centum (25%) of all assets over ten thousand dollars (\$10,000); provided, however, that the bond required by this section shall not in any event exceed fifty thousand dollars (\$50,000). If any association operates a branch or subsidiary and the officers of both associations are the same, for purposes of this section, it shall be treated as one association. Any burial association, with the consent of the Burial Association Administrator, may give a bond secured by a deed of trust on real estate situated in North Carolina, in lieu of procuring said bond from a bonding company. The bond thus given shall not be acceptable in excess of the ad valorem tax value for the current year of the real estate securing said bond. The deed of trust shall be recorded in the county or counties wherein the land lies and shall be deposited with the Burial Association Administrator, name the Administrator as trustee for the burial association and must constitute a first lien on the property secured by the deed of trust. Said deed of trust shall contain a description of the encumbered property by metes and bounds together with evidence by title insurance policy or by certificate of an attorney-at-law, certifying that said trustor is the owner of a marketable fee simple title to such lands. (1941, c. 130, s. 15; 1943, c. 272, s. 5; 1967, c. 985, s. 2; 1975, c. 837.)

**§ 58-241.24. Assessments.** — Every burial association now or hereinafter organized shall make 12 assessments, or their equivalent, per year per member. The Burial Association Administrator shall order any association to make more than 12 assessments per year when, after notice and hearing, it shall appear to the Burial Association Administrator that the death loss of any association so requires in order to protect the interest of the members. (1943, c. 272, s. 6; 1969, c. 1041, s. 1; 1971, c. 650; 1975, c. 837.)

**§ 58-241.25. Making false or fraudulent statement a misdemeanor.** — Any officer or employee of any burial association authorized to do business under this

Article, who shall knowingly or willfully make any false or fraudulent statement or representation in or with reference to any application for membership or for the purpose of obtaining money or any benefit from any burial association transacting business under this Article, or who shall make any false financial statement to the Burial Association Administrator or to the Burial Association Commission or to the membership of the burial association of which such person is an officer or employee shall be guilty of a misdemeanor and shall be fined or imprisoned in the discretion of the court. (1943, c. 272, s. 6; 1975, c. 837.)

**§ 58-241.26. Statewide organization of associations.** — It shall be lawful for the several mutual burial associations of the State of North Carolina, in good standing, to organize and provide for a statewide organization of mutual burial associations, which organization shall be for the mutual and general suggestive control of mutual burial associations in the State of North Carolina. Such organization shall be known as the North Carolina Burial Association, Incorporated, and shall be composed of members who are lawfully operating burial associations in this State and who pay their dues to such association. (1941, c. 130, s. 16; 1975, c. 837.)

**§ 58-241.27. Article deemed exclusive authority for organization, etc., of mutual burial associations.** — This Article shall be deemed and held exclusive authority for the organization and operation of mutual burial associations within the State of North Carolina, and such associations shall not be subject to any other laws respecting insurance companies of any class. (1941, c. 130, s. 17; 1975, c. 837.)

**§ 58-241.28. Operation of association in violation of law prohibited.** — No person, firm or corporation shall operate as a burial association in this State unless incorporated under the laws of the State of North Carolina and unless such association shall be operated in compliance with all the provisions of this Article, and unless such association shall be licensed and approved by the North Carolina Mutual Burial Association Commission. (1941, c. 130, s. 18; 1975, c. 837.)

**§ 58-241.29. Member in armed forces failing to pay assessments; reinstatement.** — If a member of a burial association who is in the military or naval forces of the United States fails to pay any assessment, he shall be in bad standing, and unless and until restored, shall not be entitled to benefits. However, the said member shall be reinstated in the burial association upon application made by him at any time until 12 months after his discharge from the military or naval forces of the United States, notwithstanding his physical condition and without the payment of assessments which have become due during his service in the military or naval forces of the United States. Benefits will be in force immediately after such reinstatement. (1943, c. 732, s. 2; 1975, c. 837.)

**§ 58-241.30. Hearing by Administrator of dispute over liability for funeral benefits; appeal.** — In case of a disagreement between the representative of a deceased member of any burial association and such deceased member's burial association a hearing may be held by the Burial Association Administrator, on request of either party, to determine whether the association is liable for the benefits set forth in the policy issued to the said deceased member of said burial association. The Burial Association Administrator shall render a decision which shall have the same force and effect as judgments rendered by courts of competent jurisdiction in North Carolina. Either party may appeal from the decision of the Burial Association Administrator. Appeal shall be to the district court division of the General Court of Justice in the county in which the burial

association is located. The procedure for appeal shall be the same as the appeal procedure set forth in Article 19 of Chapter 7A of the General Statutes of North Carolina regulating appeals from the magistrate to the district court. Upon appeal trial shall be de novo. (1947, c. 100, s. 5; 1975, c. 837.)

**§ 58-241.31. Administrator authorized to subpoena witnesses, administer oaths and compel attendance at hearings.** — For the purpose of holding hearings the Burial Association Administrator shall have power to subpoena witnesses, administer oaths, and compel attendance of witnesses and parties. (1957, c. 820, s. 2; 1975, c. 837.)

**§ 58-241.32. Authority of Administrator to examine financial records.** — The Burial Association Administrator shall have authority to examine all records relating to a burial association's financial condition wherever such records are located, including records maintained by any corporation, building and loan association, savings and loan association, credit union, or other legal entity organized and operating pursuant to the authority contained in Chapters 53 and 54 of the General Statutes. (1977, c. 748, s. 4.)

**§ 58-241.33. Administrator authorized to freeze certain funds of Association.** — Whenever in the opinion of the Burial Association Administrator he deems it necessary for the protection of the interest of members of a burial association, he shall have authority by written order to direct that the funds of any burial association on deposit in any institution organized and operating under Chapters 53 and 54 of the General Statutes be frozen and not paid out by such legal entity. Any legal entity freezing the funds of a burial association pursuant to the directive of the Burial Association Administrator shall not be liable to any burial association for freezing said account pursuant to the order of the Administrator. (1977, c. 748, s. 5.)

## SUBCHAPTER V. AUTOMOBILE INSURANCE.

### ARTICLE 25.

#### *Regulation of Automobile Liability Insurance Rates.*

**§§ 58-246 to 58-248.8:** Repealed by Session Laws 1977, c. 828, s. 1, effective September 1, 1977.

**Cross References.** — As to the North Carolina Rate Bureau, see § 58-124.17 et seq. As to the

regulation of insurance rates, see § 58-131.34 et seq.

**§ 58-248.9:** Repealed by Session Laws 1975, c. 666, s. 2.

**Cross Reference.** — For present provisions as to filing and implementation of classification

plans and rates for coverages on private passenger automobiles, see § 58-30.4.

**§ 58-248.10:** Repealed by Session Laws 1977, c. 828, s. 1, effective September 1, 1977.

**Cross Reference.** — As to the North Carolina Rate Bureau, see § 58-124.17 et seq. As to the

regulation of insurance rates, see § 58-131.34 et seq.

## ARTICLE 25A.

### *North Carolina Motor Vehicle Reinsurance Facility.*

**§ 58-248.26. Definitions.** — As used in this Article:

- (1) "Cede" or "cession" means the act of transferring the risk of loss from the individual insurer to all insurers through the operation of the facility.
- (10) Repealed by Session Laws 1977, c. 828, s. 10, effective September 1, 1977. (1973, c. 818, s. 1; 1977, c. 828, s. 10.)

**Editor's Note.** —

The 1977 amendment, effective Sept. 1, 1977, substituted "risk of loss" for "profit or loss of otherwise unacceptable business (to the extent permitted in the plan of operation)" in subdivision (1) and deleted former subdivision (10), which defined "reinsurance." Session Laws 1977, c. 828, s. 25, as amended by Session Laws 1979, c. 824, s. 8, provides: "This act shall become effective September 1, 1977, and shall not affect any existing policy during the existing term of said policy." Prior to the 1979 amendment,

Session Laws 1977, c. 828, s. 25, provided: "This act shall become effective September 1, 1977, and will expire September 1, 1980, and shall not affect any existing policy during the existing term of said policy."

Session Laws 1977, c. 828, s. 24, contains a severability clause.

As the other subdivisions were not changed by the amendment, they are not set out.

For a survey of 1977 law on insurance, see 56 N.C.L. Rev. 1084 (1978).

**§ 58-248.29. Insolvency.** — Any unsatisfied net liability to the Facility of any insolvent member shall be assumed by and apportioned among the remaining members in the Facility in the same manner in which assessments are apportioned by the Facility. The Facility shall have all rights allowed by law in behalf of the remaining members against the estate or funds of such insolvent for sums due the Facility in accordance with this Article. (1973, c. 818, s. 1; 1977, c. 828, s. 12.)

**Editor's Note.** — The 1977 amendment, effective Sept. 1, 1977, deleted "or gain" following "assessments." Session Laws 1977, c. 828, s. 25, as amended by Session Laws 1979, c. 824, s. 8, provides: "This act shall become effective September 1, 1977, and shall not affect any existing policy during the existing term of said policy." Prior to the 1979 amendment,

Session Laws 1977, c. 828, s. 25, provided: "This act shall become effective September 1, 1977, and will expire September 1, 1980, and shall not affect any existing policy during the existing term of said policy."

Session Laws 1977, c. 828, s. 24, contains a severability clause.

**§ 58-248.30. Merger, consolidation or cession.** — When a member has been merged or consolidated into another insurer, or has reinsured its entire motor vehicle liability insurance business in the State with another insurer, such company or its successor in interest shall remain liable for all obligations hereunder and such company and its successor in interest and the other insurers with which it has been merged or consolidated shall continue to participate in the Facility according to the rules of operation. (1973, c. 818, s. 1; 1977, c. 828, s. 13.)

**Editor's Note.** — The 1977 amendment, effective Sept. 1, 1977, substituted "reinsured" for "ceded" and "with another insurer" for "to another insurer." Session Laws 1977, c. 828, s. 25, as amended by Session Laws 1979, c. 824, s. 8, provides: "This act shall become effective September 1, 1977, and shall not affect any existing policy during the existing term of said

policy." Prior to the 1979 amendment, Session Laws 1977, c. 828, s. 25, provided: "This act shall become effective September 1, 1977, and will expire September 1, 1980, and shall not affect any existing policy during the existing term of said policy."

Session Laws 1977, c. 828, s. 24, contains a severability clause.

**§ 58-248.31. General obligations of insurers.** — (a) Except as otherwise provided in this Article all insurers as a prerequisite to the further engaging in this State in the writing of motor vehicle insurance or any component thereof shall accept and insure any otherwise unacceptable applicant therefor who is an eligible risk if cession of the particular coverage and coverage limits applied for are permitted in the Facility. All such insurers shall equitably share the results of such otherwise unacceptable business through the Facility and shall be bound by the acts of their agents in accordance with the provisions of this Article. No insurer shall impose upon any of its agents, solely on account of ceded business received from such agents, any quota or matching requirement for any other insurance as a condition for further acceptance of ceded business from such agents.

(b) Each insurer will provide the same type of service to ceded business that it provides for its voluntary market. Records provided to agents and brokers will include an indication that the business is ceded. When an insurer cedes a policy or renewal thereof to the Facility and the Facility premium for such policy is higher than the premium that the insurer would normally charge for such policy if retained by the insurer, the policyholder will be informed that (i) his policy is ceded, (ii) the coverages are written at the Facility rate, which rate differential must be specified, (iii) the reason or reasons for the cession to the Facility, (iv) the specific reason or reasons for the cession to the Facility will be provided upon the written request of the policyholder to the insurer, and (v) the policyholder may seek insurance through other insurers who may elect not to cede his policy. If such policyholder obtains motor vehicle liability insurance through another insurer who elects not to cede his policy to the Facility and the policyholder cancels his ceded policy within 45 days of the effective date of such ceded policy, the earned premium for such ceded policy shall be calculated on the pro rata basis, except that the pro rata calculation shall not apply to a cancellation by any insurance premium finance company as provided in G.S. 58-60.

(c) Upon the written request of any eligible risk who has been notified pursuant to subsection (b) of this section that his motor vehicle insurance policy has been ceded to the Facility, the insurer ceding the insurance policy must provide in writing to that eligible risk the specific reason or reasons for the decision to cede that policy to the Facility. Proof of mailing of the written reason or reasons is sufficient proof of compliance with this obligation. With regard to any notice of cession or any written or oral communications specifying the reason or reasons for cession, there will be no liability on the part of, and no cause of action of any nature will arise against, (i) any insurer or its authorized representatives, agents, or employees, or (ii) any licensed agent, broker, or persons who furnish to the insurer information as to the reason or reasons for the cession, for any communications or statements made by them, unless the communications or statements are shown to have been made in bad faith with malice in fact. (1973, c. 818, s. 1; 1979, c. 732.)

**Editor's Note.** — The 1979 amendment, effective Oct. 1, 1979, designated the former section as subsection (a) and added subsections (b) and (c).

**§ 58-248.32. General obligations of agents.** — (a) Except as otherwise provided in this Article, no licensed agent of an insurer authorized to solicit and accept premiums for motor vehicle insurance or any component thereof by the company he represents shall refuse on behalf of said company to accept any application from an eligible risk for such insurance and to immediately bind the coverage applied for and for a period of not less than six months if cession of the particular coverage and coverage limits applied for are permitted in the Facility, provided the application is submitted during the agent's normal business hours, at his customary place of business and in accordance with the

agent's customary practices and procedures. The commission paid on the insurance coverages provided in this Article shall not be less than the commission on insurance coverage written through the North Carolina Insurance Plan on May 1, 1973. The same commission shall apply uniformly statewide.

(b) It shall be the responsibility of the agent to write the coverage applied for at what he believes to be the appropriate rate level. If coverage is written at the Facility rate level and the company elects not to cede, the policy shall be rated at the voluntary rate level. Coverage written at the voluntary rate level which is not acceptable to the company must either be placed with another company or rated at the Facility rate level by the agent. (1973, c. 818, s. 1; 1977, c. 828, s. 11.)

**Editor's Note.** — The 1977 amendment, effective Sept. 1, 1977, designated the former provisions of this section as subsection (a) and added subsection (b). Session Laws 1977, c. 828, s. 25, as amended by Session Laws 1979, c. 824, s. 8, provides: "This act shall become effective September 1, 1977, and shall not affect any existing policy during the existing term of said

policy." Prior to the 1979 amendment, Session Laws 1977, c. 828, s. 25, provided: "This act shall become effective September 1, 1977, and will expire September 1, 1980, and shall not affect any existing policy during the existing term of said policy."

Session Laws 1977, c. 828, s. 24, contains a severability clause.

**§ 58-248.33. The Facility; functions; administration.** — (a) The operation of the Facility shall assure the availability of motor vehicle insurance to any eligible risk and the Facility shall accept all placements made in accordance with this Article, the plan of operation adopted pursuant thereto, and any amendments to either.

(b) The Facility shall reinsure for each coverage available therein to the standard percentage of one hundred percent (100%) or lesser equitable percentage established in the plan of operation as follows:

(1) For the following coverages of motor vehicle insurance and in at least the following amounts of insurance:

- a. Bodily injury liability: twenty-five thousand dollars (\$25,000) each person, fifty thousand dollars (\$50,000) each accident;
- b. Property damage liability: ten thousand dollars (\$10,000) each accident;
- c. Medical payments: one thousand dollars (\$1,000) each person; except that this coverage shall not be available for motorcycles;
- d. Uninsured motorist: twenty-five thousand dollars (\$25,000) each person; fifty thousand dollars (\$50,000) each accident for bodily injury; five thousand dollars (\$5,000) each accident property damage (one hundred dollars (\$100.00) deductible);
- e. Any other motor vehicle insurance limits in the amount required by any law or regulatory agency regulation for those motor carriers who furnish proof of insurance or file certificates of insurance with any regulatory agency in order to comply with the security or other financial responsibility requirements of the North Carolina Utilities Commission and the United States Interstate Commerce Commission.

(2) Additional ceding privileges for motor vehicle insurance shall be provided by the Board of Governors if there is a substantial public demand for a coverage or coverage limit of any component of motor vehicle insurance up to the following:

- Bodily injury liability: one hundred thousand dollars (\$100,000) each person, three hundred thousand dollars (\$300,000) each accident;  
Property damage liability: fifty thousand dollars (\$50,000) each accident;

Medical payments: two thousand dollars (\$2,000) each person; Uninsured motorist: one hundred thousand dollars (\$100,000) each person and each accident for bodily injury and five thousand dollars (\$5,000) for property damage (one hundred dollars (\$100.00) deductible).

Any other motor vehicle insurance required by law: in twice the amount of coverage limits required by law.

- (3) Whenever the additional ceding privileges are provided as in G.S. 58-248.33(b)(2) for any component of motor vehicle insurance, the same additional ceding privileges shall be available to "all other" types of risks subject to the rating jurisdiction of the North Carolina Automobile Rate Administrative Office.

(g) Except as may be delegated specifically to others in the plan of operation or reserved to the members, power and responsibility for the establishment and operation of the Facility is vested in the Board of Governors, which power and responsibility include but is not limited to the following:

- (1) To sue and be sued in the name of the Facility. No judgment against the Facility shall create any direct liability in the individual member companies of the Facility.
- (2) To receive and record cessions.
- (3) To assess members on the basis of participation ratios established in the plan of operation to cover anticipated or incurred costs of operation and administration of the Facility at such intervals as are established in the plan of operation.
- (4) To contract for goods and services from others to assure the efficient operation of the Facility.
- (5) To hear and determine complaints of any company, agent or other interested party concerning the operation of the Facility.
- (6) Upon the request of any licensed fire and casualty agent meeting any two of the standards set forth below as determined by the Commissioner of Insurance within 10 days of the receipt of the application, the Facility shall contract with one or more members within 20 days of receipt of the determination to appoint such licensed fire and casualty agent as designated agents in accordance with reasonable rules as are established by the plan of operation. Such standards shall be:
  - a. Whether the agent's evidence establishes that he has been conducting his business in a community for a period of at least one year;
  - b. Whether the agent's evidence establishes that he had a gross premium volume during the 13 months next preceding the date of his application of at least twenty thousand dollars (\$20,000) from motor vehicle insurance;
  - c. Whether the agent's evidence establishes that the number of eligible risks served by him during the 13 months next preceding the date of his application was 200 or more;
  - d. Whether the agent's evidence establishes a growth in eligible risks served and premium volume during his years of service as an agent;
  - e. Whether the agent's evidence establishes that he made available to eligible risks premium financing or any other plan for deferred payment of premiums.

If no insurer is willing to contract with any such agent on terms acceptable to the Board, the Facility shall license such agents to write directly on behalf of the Facility. However, for this purpose, the Facility does not act as an insurer, but only as the statutory agent of all the members of the Facility which shall be bound on risks written by the

Facility's appointed agent. Adequate provision shall be made by the Facility to assure that business produced by designated agents which would meet the underwriting criteria of the company shall be written at the voluntary rate and not at the Facility rate if higher. The Facility may contract with one or more servicing carriers and shall promulgate fair and reasonable underwriting procedures to require that business produced by Facility agents and written through said carriers shall be appropriately classified and rated. To this end, the same underwriting criteria for classification and rates used for its voluntary agents shall be used by the servicing carrier servicing such Facility agents in order to determine whether the voluntary rate or the Facility rate shall apply. All business produced by designated agents or Facility agents may be ceded to the Facility.

- (7) To maintain all loss, expense, and premium data relative to all risks reinsured in the Facility, and to require each member to furnish such statistics relative to insurance reinsured by the Facility at such times and in such form and detail as may be required.
  - (8) To establish fair and reasonable procedures for the sharing among members of any loss on Facility business which cannot be recouped pursuant to G.S. 58-248.34(f) and other costs, charges, expenses, liabilities, income, property and other assets of the Facility and for assessing or distributing to members their appropriate shares. Such shares may be based on the member's premiums for voluntary business for the appropriate category of motor vehicle insurance or by any other fair and reasonable method.
  - (9) To receive or distribute all sums required by the operation of the Facility.
  - (10) To accept all risks submitted in accordance with this Article.
  - (11) To establish procedures for reviewing claims practices of member companies to the end that claims to the account of the Facility will be handled fairly and efficiently.
  - (12) To adopt and enforce all rules and to do anything else where the Board is not elsewhere herein specifically empowered which is otherwise necessary to accomplish the purpose of the Facility and is not in conflict with the other provisions of this Article.
- (l) The classifications, rules, rates, rating plans and policy forms used on motor vehicle insurance policies reinsured by the Facility may be made by the Facility or by any licensed or statutory rating organization or bureau on its behalf and shall be filed with the Commissioner. The Board of Governors shall establish a separate subclassification within the Facility for "clean risks" as herein defined. For the purpose of this Article, a "clean risk" shall be any owner of a motor vehicle classified as a private passenger non-fleet motor vehicle as defined under Article 13C of this Chapter if the owner and the principal operator and each licensed operator in the owner's household have two years' driving experience and if neither the owner nor any member of his household nor the principal operator had had any chargeable accident or any conviction for a moving traffic violation pursuant to the subclassification plan established by the provisions of G.S. 58-30.4, during the three-year period immediately preceding the date of application for motor vehicle insurance or the date of preparation for a renewal motor vehicle insurance policy. Such filings may incorporate by reference any other material on file with the Commissioner. Rates shall be neither excessive, inadequate nor unfairly discriminatory. If the Commissioner finds, after a hearing, that a rate is either excessive, inadequate or unfairly discriminatory, he shall issue an order specifying in what respect it is deficient and stating when, within a reasonable period thereafter, such rate shall be deemed no longer effective. Said order is subject to judicial review as set out in Article 2 of this Chapter. Pending judicial review of said order, the filed

classification plan and the filed rates may be used, charged and collected in the same manner as set out in G.S. 58-131.42 of this Chapter. Said order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order. All rates shall be on an actuarially sound basis and shall be calculated, insofar as is possible, to produce neither a profit nor a loss. However, the rates made by or on behalf of the Facility with respect to "clean risks", as defined above, shall not exceed the rates charged "clean risks" who are not reinsured in the Facility. The difference between the actual rate charged and the actuarially sound and self-supporting rates for "clean risks" reinsured in the Facility may be recouped in similar manner as assessments pursuant to G.S. 58-248.34(f). Rates shall not include any factor for underwriting profit on Facility business, but shall provide an allowance for contingencies. There shall be a strong presumption that the rates and premiums for the business of the Facility are neither unreasonable nor excessive.

(m) In addition to annual premiums, the rules of the Facility shall allow semiannual and quarterly premium terms. (1973, c. 818, s. 1; 1977, c. 710; c. 828, ss. 14-19; 1977, 2nd Sess., c. 1135; 1979, c. 676, ss. 1, 2.)

**Editor's Note.** — The first 1977 amendment added subdivision (3) of subsection (b).

The second 1977 amendment, effective Sept. 1, 1977, in subsection (a), deleted "by means of reinsurance" following "any eligible risk" and substituted "all placements made" for "for transfer to the account of all members, the profit or loss of the business ceded," in subsection (g), substituted "record cessions" for "record reinsurance cessions from member companies" in subdivision (2), rewrote subdivision (6), substituted "of any loss" for "of profit and loss" and inserted "which cannot be recouped pursuant to G.S. 58-248.34(f)" in the first sentence of subdivision (8), deleted "from the companies" following "submitted" in subdivision (10), and added subdivisions (l) and (m). Session Laws 1977, c. 828, s. 25, as amended by Session Laws 1979, c. 824, s. 8, provides: "This act shall become effective September 1, 1977, and shall not affect any existing policy during the existing term of said policy." Prior to the 1979 amendment, Session Laws 1977, c. 828, s. 25, provided: "This act shall become effective September 1, 1977, and will expire September 1, 1980, and shall not affect any existing policy during the existing term of said policy."

The 1977, 2nd Sess., amendment, effective October 1, 1978, added paragraph e to subdivision (b)(1).

The 1979 amendment, effective October 1, 1979, substituted the present second and third sentences of subsection (l) for the former second sentence, which read: "The Commissioner may

establish separate subclassifications within the Facility for clean risks as defined by the Commissioner." The amendment added the tenth sentence of subsection (l) and, in the eleventh sentence, deleted "However, if the Commissioner determines, after hearing, that any class reinsured in the Facility is entitled to a subsidy, the Commissioner can order that such subsidy shall be provided in which event" at the beginning of the sentence and substituted "'clean risks' reinsured by the Facility may" for "such class shall" near the middle of the sentence.

Session Laws 1977, c. 828, s. 24, contains a severability clause.

As the rest of the section was not changed by the amendments, only subsections (a), (b), (g), (l) and (m) are set out.

**Subdivision (g)(1) makes the Board of Governors of the Facility the public's representative** to the exclusion of all others except where the facility act expressly provides otherwise. State Farm Mut. Auto. Ins. Co. v. Ingram, 288 N.C. 381, 218 S.E.2d 364 (1975).

**The Commissioner was not intended to be the representative of the public** or to be deemed an aggrieved person so as to permit him to appeal pursuant to the provisions of § 58-9.3. State Farm Mut. Auto. Ins. Co. v. Ingram, 288 N.C. 381, 218 S.E.2d 364 (1975).

**Thus the Commissioner is not expressly granted the power to appeal by this section.** State Farm Mut. Auto. Ins. Co. v. Ingram, 288 N.C. 381, 218 S.E.2d 364 (1975).

#### § 58-248.34. Plan of operation.

(d) Any order of the Commissioner with respect to the plan of operation or any revision or amendment thereof shall be subject to court review as provided in G.S. 58-9.3.

(e) Upon approval of the Commissioner of the plan so submitted or the promulgation of a plan deemed approved by the Commissioner, all insurance companies licensed to write motor vehicle insurance in this State or any component thereof as a prerequisite to further engaging in writing such insurance shall formally subscribe to and participate in the plan so approved.

The plan of operation shall provide for, among other matters, the establishment of necessary facilities, the management of the Facility, the preliminary assessment of all members for initial expenses necessary to commence operations, the assessment of members if necessary to defray losses and expenses, the distribution of gains to defray losses incurred since the effective date hereof and then to persons reinsured by the Facility, the recoupment of losses sustained by the Facility, which losses may be recouped either through surcharging persons reinsured by the Facility or by equitable pro rata assessment of member companies, the standard amount (one hundred percent (100%) or any equitable lesser amount) of coverage afforded on eligible risks which a member company may cede to the Facility, and the procedure by which reinsurance shall be accepted by the Facility; and shall further provide that:

(1) Members of the Board of Governors shall receive reimbursement from the Facility for their actual and necessary expenses incurred on Facility business, en route to perform Facility business, and while returning from Facility business plus a per diem allowance of twenty-five dollars (\$25.00) a day which may be waived.

(2) In order to obtain a transfer of business to the Facility effective when the binder or policy or renewal thereof first becomes effective, the company must within 30 days of the binding or policy effective date notify the Facility of the identification of the insured, the coverage and limits afforded, classification data, and premium. The Facility shall accept risks at other times on receipt of necessary information, but such acceptance shall not be retroactive. The Facility shall accept renewal business after the member on underwriting review elects to again cede the business.

(f) The plan of operation shall provide that every member shall, following payment of any pro rata assessment, commence recoupment of that assessment by way of an identifiable surcharge on motor vehicle insurance policies issued by the member or through the Facility until the assessment has been recouped. Such surcharge may be at a percentage of premium or dollar amount per policy adopted by the Board of Governors of the Facility. With the exception of the recoupment provided for in G.S. 58-248.33(l) and with the exception of the surcharge against persons reinsured by the Facility as provided for in G.S. 58-248.34(e), recoupment, if necessary, shall not be made based on loss or expense experience prior to July 1, 1979. If the amount collected during the period of surcharge exceeds assessments paid by the member to the Facility, the member shall pay over the excess to the Facility at a date specified by the Board of Governors. If the amount collected during the period of surcharge is less than the assessments paid by the member to the Facility, the Facility shall pay the difference to the member. The amount of recoupment shall not be considered or treated as premium for any purpose.

(g) The plan of operation shall provide that all investment income from the premium on business reinsured by the Facility shall be retained by or paid over to the Facility. In determining the cost of operation of the Facility, all investment income shall be taken into consideration.

(h) The plan of operation shall provide for audit of the annual statement of the Facility by independent auditor approved by the Legislative Services Commission. (1973, c. 818, s. 1; 1975, c. 19, s. 18; 1977, c. 828, ss. 20, 21.)

**Editor's Note.** — The 1975 amendment corrected an error in the 1973 act by substituting "revision or amendment" for "revision of amendment" in subsection (d).

The 1977 amendment, effective Sept. 1, 1977, inserted "if necessary" and the language beginning "to defray losses incurred since the effective date hereof" and ending "by equitable pro rata assessment of member companies" near the middle of the introductory language of the second paragraph of subsection (e) and added subsections (f), (g) and (h). Session Laws 1977, c. 828, s. 25, as amended by Session Laws 1979, c. 824, s. 8, provides: "This act shall become effective September 1, 1977, and shall not affect

any existing policy during the existing term of said policy." Prior to the 1979 amendment, Session Laws 1977, c. 828, s. 25, provided: "This act shall become effective September 1, 1977, and will expire September 1, 1980, and shall not affect any existing policy during the existing term of said policy."

Session Laws 1977, c. 828, s. 24, contains a severability clause.

As the rest of the section was not changed by the amendments, only subsections (d) through (h) are set out.

Stated in State Farm Mut. Auto. Ins. Co. v. Ingram, 288 N.C. 381, 218 S.E.2d 364 (1975).

**§ 58-248.35. Procedure for cession provided in plan of operation.** — Upon receipt by the company of a risk which it does not elect to retain, the company shall follow such procedures for ceding the risk as are established by the plan of operation. (1973, c. 818, s. 1; 1977, c. 828, s. 22.)

**Editor's Note.** — The 1977 amendment, effective Sept. 1, 1977, deleted the proviso from the end of the section. Session Laws 1977, c. 828, s. 25, as amended by Session Laws 1979, c. 824, s. 8, provides: "This act shall become effective September 1, 1977, and shall not affect any existing policy during the existing term of said policy." Prior to the 1979 amendment, Session

Laws 1977, c. 828, s. 25, provided: "This act shall become effective September 1, 1977, and will expire September 1, 1980, and shall not affect any existing policy during the existing term of said policy."

Session Laws 1977, c. 828, s. 24, contains a severability clause.

**§ 58-248.36. Termination of insurance.** — No member may terminate insurance to the extent that cession of a particular type of coverage and limits is available under the provisions of this Article except for the following reasons:

- (5) The named insured, at the time of renewal, fails to meet the requirements contained in the corporate charter, articles of incorporation, and/or bylaws of the insurer, when the insurer is a company organized for the sole purpose of providing members of an organization with insurance policies in North Carolina. (1973, c. 818, s. 1; 1979, c. 497.)

**Editor's Note.** — The 1979 amendment added subdivision (5).

As the rest of this section was not changed by the amendment, only the introductory paragraph and subdivision (5) are set out.

**§ 58-248.37. Exemption from requirements of this Article of companies and their agents.** — The Board of Governors may exempt a company and its agents from the requirements of this Article, insofar as new business is concerned. The Board may further exempt a company and its agents from the requirements of this Article regarding the selling and servicing a particular category of business, if the company is not qualified to service the business. (1973, c. 818, s. 1; 1977, c. 828, s. 23.)

**Editor's Note.** — The 1977 amendment, effective Sept. 1, 1977, deleted "By reason of the limit on cessions provided in this Article" from

the beginning of the section. Session Laws 1977, c. 828, s. 25, as amended by Session Laws 1979, c. 824, s. 8, provides: "This act shall become

effective September 1, 1977, and shall not affect any existing policy during the existing term of said policy." Prior to the 1979 amendment, Session Laws 1977, c. 828, s. 25, provided: "This act shall become effective September 1, 1977,

and will expire September 1, 1980, and shall not affect any existing policy during the existing term of said policy."

Session Laws 1977, c. 828, s. 24, contains a severability clause.

### § 58-248.39. Hearings; review.

**Cited** in State Farm Mut. Auto. Ins. Co. v. Ingram, 288 N.C. 381, 218 S.E.2d 364 (1975).

## SUBCHAPTER VI. ACCIDENT AND HEALTH INSURANCE.

### ARTICLE 26.

#### *Nature of Policies.*

### § 58-250. Form of policy.

**Cross Reference.** — For the Readable Insurance Policies Act, see § 58-364 et seq.

**Amendment Effective July 1, 1981.** — Session Laws 1979, c. 755, s. 8, effective July 1, 1981, will rewrite subdivision (4) of subsection (a) to read as follows:

"(4) The style, arrangement, and overall appearance of the policy, any endorsements, or attached papers give

no undue prominence to any portion of the text. For the purpose of this subdivision, 'text' includes all printed matter except the name and address of the insurer, the name or title of the policy, and captions and subcaptions."

Session Laws 1979, c. 755, s. 20, contains a severability clause.

### § 58-251.1. Accident and health policy provisions.

**Cross Reference.** — For the Readable Insurance Policies Act, see § 58-364 et seq.

**Amendment Effective July 1, 1981.** — Session Laws 1979, c. 755, ss. 9 through 12, effective July 1, 1981, will amend subsections (a) and (b) of this section to read as follows:

**“§ 58-251.1. Accident and health policy provisions.** — (a) Required Provisions. — Except as provided in subsection (c) of this section each such policy delivered or issued for delivery to any person in this State shall contain the provisions specified in this subsection in the substance of the words that appear in this section. Such provisions shall be preceded individually by the caption appearing in this subsection or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the Commissioner may approve.

(1) A provision in the substance of the following language:

ENTIRE CONTRACT; CHANGES: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and

unless such approval be endorsed hereon or attached hereto. No agent has authority to change this policy or waive any of its provisions.

(2) A provision in the substance of the following language:

TIME LIMIT ON CERTAIN DEFENSES:

a. After two years from the date of issue or reinstatement of this policy no misstatements except fraudulent misstatements made by the applicant in the application for such policy shall be used to void the policy or deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of such two-year period.

The foregoing policy provisions may be used in its entirety only in major or catastrophe hospitalization policies and major medical policies each affording benefits of five thousand dollars (\$5,000) or more for any one sickness or injury. Disability income policies affording benefits

of one hundred dollars (\$100.00) or more per month for not less than 12 months and franchise policies. Other policies to which this section applies must delete the words 'except fraudulent misstatements.'

(The foregoing policy provision shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during such initial two-year period, nor to limit the application of G.S. 58-251.1(b), (1), (2), (3), (4) and (5) in the event of misstatement with respect to age or occupation or other insurance.)

(A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium:

1. Until at least age 50 or,
2. In the case of a policy issued after age 44, for at least five years from its date of issue, may contain in lieu of the foregoing the following provisions (from which the clause in parentheses may be omitted at the insurer's option) under the caption 'INCONTESTABLE.'

After this policy has been in force for a period of two years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become contestable as to the statements contained in the application.)

- b. No claim for loss incurred or disability (as defined in the policy) commencing after two years from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy.

- (3) A provision in the substance of the following language:

**GRACE PERIOD:** A grace period of ..... (insert a number not less than '7' for weekly premium policies, '10' for monthly premium policies and '31' for all other policies) days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force.

(A policy which contains a cancellation provision may add, at the end of the above provision, subject to the right of the insurer to cancel in accordance with the cancellation provision hereof.

A policy in which the insurer reserves the right to refuse any renewal shall have, at the beginning of the above provision,

Unless not less than five days prior to the premium due date the insurer has delivered to the insured or has mailed to his last address as shown by the record of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted.)

- (4) A provision in the substance of the following language:

**REINSTATEMENT:** If any renewal premium be not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept such premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy; provided, however, that if the insurer or such agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon approval of such application by the insurer, or, lacking such approval, upon the forty-fifth day following the date of such conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of such application. The reinstated policy shall cover only loss resulting from such accidental injury as may be sustained after the date of reinstatement and loss due to such sickness as may begin more than 10 days after such date. In all other respects the insured and insurer shall have the same rights thereunder as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with a reinstatement shall be applied to a period for which premium has not been previously paid, but not to any period more than 60 days prior to the date of reinstatement.

(The last sentence of the above provision may be omitted from any policy which the insured has the right to

continue in force subject to its terms by the timely payment of premiums:

- a. Until at least age 50 or,
- b. In the case of a policy issued after age 44, for at least five years from its date of issue.)

(5) A provision in the substance of the following language:

**NOTICE OF CLAIM:** Written notice of claim must be given to the insurer within 20 days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at . . . . . . . . (insert the location of such office as the insurer may designate for the purpose), or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer.

(In a policy providing a loss-of-time benefit which may be payable for at least two years, an insurer may at its option insert the following between the first and second sentences of the above provision:

Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least two years, he shall, at least once in every six months after having given notice of claim, give to the insurer notice of continuance of said disability, except in the event of legal incapacity. The period of six months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of six months preceding the date on which such notice is actually given.)

(6) A provision in the substance of the following language:

**CLAIM FORMS:** The insurer, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not furnished within 15 days after the giving of such notice the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the

character and the extent of the loss for which claim is made.

(7) A provision in the substance of the following language:

**PROOFS OF LOSS:** Written proof of loss must be furnished to the insurer at its said office in case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss within 90 days after the termination of the period for which the insurer is liable and in case of claim for any other loss within 90 days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than one year from the time proof is otherwise required.

(8) A provision in the substance of the following language:

**TIME OF PAYMENT OF CLAIMS:** Indemnities payable under this policy for any loss other than loss for which this policy provides any period payment will be paid immediately upon receipt of due written proof of such loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid . . . . . (insert period for payment which must not be less frequently than monthly) and any balance remaining unpaid upon the termination of liability will be paid immediately upon receipt of due written proof.

(9) A provision in the substance of the following language:

**PAYMENT OF CLAIMS:** Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to such beneficiary or to such estate. All other indemnities will be payable to the insured.

(The following provisions, or either of them, may be included with the foregoing provision at the option of the insurer:

If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay such indemnity, up to an amount not exceeding \$. . . . . (insert an amount which shall not exceed one thousand dollars (\$1,000)), to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of such payment.

Subject to any written direction of the insured in the application or otherwise all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical, or surgical services, may at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proofs of such loss, be paid directly to the hospital or person rendering such services; but it is not required that the service be rendered by a particular hospital or person.)

- (10) A provision in the substance of the following language:

**PHYSICAL EXAMINATIONS AND AUTOPSY:** The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law.

- (11) A provision in the substance of the following language:

**LEGAL ACTIONS:** No action at law or in equity shall be brought to recover on this policy prior to the expiration of 60 days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action shall be brought after the expiration of three years after the time written proof of loss is required to be furnished.

- (12) A provision in the substance of the following language:

**CHANGE OF BENEFICIARY:** Unless the insured makes an irrevocable designation of beneficiary, the right to change of beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or

assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy.

(The first clause of this provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option.)

"(b) Other Provisions. — Except as provided in subsection (c) of this section, no such policy delivered or issued for delivery to any person in this State shall contain provisions respecting the matters set forth below unless such provisions are in the substance of the words that appear in this section. Any such provision contained in the policy shall be preceded individually by the appropriate caption appearing in this subsection or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the Commissioner may approve.

- (1) A provision in the substance of the following language:

**CHANGE OF OCCUPATION:** If the insured be injured or contract sickness after having changed his occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for such more hazardous occupation. If the insured changes his occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly, and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change in occupation.

- (2) A provision in the substance of the following language:

**MISSTATEMENT OF AGE:** If the age of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age.

- (3) A provision in the substance of the following language:

**OTHER INSURANCE IN THIS INSURER:** If an accident or health or accident and health policy or policies previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for . . . . . (insert type of coverage or coverages) in excess of \$ . . . . . (insert maximum limit of indemnity or indemnities) the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured or to his estate.

Or, in lieu thereof:

Insurance effective at any one time on the insured under a like policy or policies in this insurer is limited to the one such policy elected by the insured, his beneficiary or his estate, as the case may be, and the insurer will return all premiums paid for all other such policies.

- (4) A provision in the substance of the following language:

**INSURANCE WITH OTHER INSURERS:** If there be other valid coverage, not with this insurer, providing benefits for the same loss on a provision of service basis or on an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability under any expense incurred coverage of this policy shall be for such proportion of the loss as the amount which would otherwise have been payable hereunder plus the total of the like amounts under all such other valid coverages for the same loss of which this insurer had notice bears to the total like amounts under all valid coverages for such loss, and for the return of such portion of the premiums paid as shall exceed the pro rata portion for the amount so determined. For the purpose of applying this provision when other coverage is on a provision of service basis, the 'like amount' of such other coverage shall be taken as the amount which the services rendered would have cost in the absence of such coverage.

(If the foregoing policy provision is included in a policy which also contains the next following policy provision there shall be added to the caption of the foregoing provision the phrase ' . . . EXPENSE INCURRED BENEFITS.' The insurer may, at its option, include in this provision a definition of 'other valid coverage,' approved as to form by the Commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and by hospital or medical service organizations, and to any other coverage the inclusion of which may be approved by the Commissioner. In the absence of such definition such term shall not include group insurance, automobile medical payments insurance, or coverage provided by hospital or medical service organizations or by union welfare plans or employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability statute) whether provided by a governmental agency or otherwise shall in all cases be deemed to be 'other valid coverage' of which the insurer has had notice. In applying the foregoing policy provisions no third-party liability coverage shall be included as 'other valid coverage.'

- (5) A provision in the substance of the following language:

**INSURANCE WITH OTHER INSURERS:** If there be other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability for such benefits under this policy shall be for such proportion of the indemnities otherwise provided hereunder for such loss as the like indemnities of which the insurer had notice (including the indemnities under this policy) bear to the total amount of all like indemnities for such loss, and for the return of such portion of the premium paid as shall exceed the pro rata portion for the indemnities thus determined.

(If the foregoing policy provision is included in a policy which also contains the next preceding policy provision there shall be added to the caption of the foregoing provision the phrase '... OTHER BENEFITS.' The insurer may, at its option, include in this provision a definition of 'other valid coverage,' approved as to form by the Commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and to any other coverage the inclusion of which may be approved by the Commissioner. In the absence of such definition such term shall not include group insurance, or benefits provided by union welfare plans or by employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability statute) whether provided by a governmental agency or otherwise shall in all cases be deemed to be 'other valid coverage' of which the insurer has had notice. In applying the foregoing policy provision no third-party liability coverage shall be included as 'other valid coverage.')

- (6) A provision in the substance of the following language:

**RELATION OF EARNINGS TO INSURANCE:** If the total monthly amount of loss of time benefits promised for the same loss under all valid loss of time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or his average monthly earnings for the period of two years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings or such average monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such two years as shall

exceed the pro rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of two hundred dollars (\$200.00) or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time.

(The foregoing policy provision may be inserted only in a policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums:

- a. Until at least age 50 or,
- b. In the case of a policy issued after age 44, for at least five years from its date of issue.

The insurer may, at its option, include in this provision a definition of "valid loss of time coverage," approved as to form by the Commissioner, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, or to any other coverage the inclusion of which may be approved by the Commissioner or any combination of such coverages. In the absence of such definition such term shall not include any coverage provided for such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability statute), or benefits provided by union welfare plans or by employer or employee benefit organizations.)

- (7) A provision in the substance of the following language:

**UNPAID PREMIUM:** Upon the payment of a claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted therefrom.

- (8) Repealed by Session Laws 1955, c. 886, s. 1.

- (9) A provision in the substance of the following language:

**CONFORMITY WITH STATE STATUTES:** Any provision of this policy which, on its effective date, is in conflict with the statutes of the state in which the insured resides on such date is hereby amended to conform to the minimum requirements of such statutes.

- (10) A provision in the substance of the following language:

**ILLEGAL OCCUPATION:** The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation.

- (11) A provision in the substance of the following language:

**INTOXICANTS AND NARCOTICS:** The insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician."

Session Laws 1979, c. 755, s. 20, contains a severability clause.

### **§ 58-251.2. Renewability of individual and blanket hospitalization and accident and health insurance policies.**

**Cross Reference.** — For the Readable Insurance Policies Act, see § 58-364 et seq.

**Amendment Effective July 1, 1981.** — Session Laws 1979, c. 755, s. 13, will amend this section by inserting "in substance" between

"include" and "the following" near the end of the first paragraph in subsection (a).

Session Laws 1979, c. 755, s. 20, contains a severability clause.

**§ 58-251.6. Insurers and others to afford coverage for active medical treatment in tax-supported institutions.** — (a) No policy providing benefits for charges of hospitals or physicians shall be delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State by the Commissioner of Insurance, after May 21, 1975, unless such policy provides for the payment of benefits for charges made for medical care rendered in or by duly licensed State tax-supported institutions, including charges for medical care of cerebral palsy, other orthopedic and crippling disabilities, mental and nervous diseases and disorders, mental retardation, alcoholism and drug or chemical dependency, and respiratory illness, on a basis no less favorable than the basis which would apply had the medical care been rendered in or by any other public or private institution or provider. The term "State tax-supported institutions" shall include community mental health centers and other health clinics which are certified as Medicaid providers.

(b) No policy shall exclude payment for charges of a duly licensed State tax-supported institution because of its being a specialty facility for one particular type of illness nor because it does not have an operating room and related equipment for the performance of surgery, but it is not required that benefits be payable for domiciliary or custodial care, rehabilitation, training, schooling, or occupational therapy.

(c) The restrictions and requirements of this section shall not apply to any policy which is individually underwritten or provided for a specific individual and the members of his family as a nongroup policy, but shall apply only to those group policies of insurance delivered, issued for delivery, reissued or renewed in this State on and after July 1, 1975. (1975, c. 345, s. 1.)

**§ 58-251.7. Policies to be issued to any person possessing the sickle cell trait or hemoglobin C trait.** — No insurance company licensed in this State pursuant to the provisions of this Chapter shall refuse to issue or deliver any policy (regardless of whether any of such policies shall be defined as individual, family, group, blanket, franchise, industrial or otherwise) which is currently being issued for delivery in this State, and which affords benefits or coverage for any medical treatment or service authorized or permitted to be furnished by a hospital, clinic, family health plan, neighborhood health plan, health maintenance organization, physician, physician's assistant, nurse practitioner or any medical service facility or personnel by reason of the fact that the person

to be insured possesses sickle cell trait or hemoglobin C trait, nor shall any such policy issued and delivered in this State carry a higher premium rate or charge by reason of the fact that the person to be insured possesses said trait. (1975, c. 599, s. 1.)

**Editor's Note.** — Session Laws 1975, c. 599, s. 3, makes the act effective July 1, 1975, and provides that it shall apply to policies of

insurance delivered or issued for delivery in this State on or after July 1, 1975.

### § 58-254.2. Industrial sick benefit insurance; provisions.

**Cross Reference.** — For the Readable Insurance Policies Act, see § 58-364 et seq.

**Amendment Effective July 1, 1981.** — Session Laws 1979, c. 755, s. 14, effective July 1, 1981, will amend the introductory paragraph of this section to read as follows:

**"§ 58-254.2. Industrial sick benefit insurance; provisions."** — Policies issued under

the industrial sick benefit plan shall contain the substance of provisions contained in G.S. 58-251.1 and in addition shall contain the following:

Session Laws 1979, c. 755, s. 20, contains a severability clause.

### § 58-254.7. Approval by Commissioner of forms, classification and rates; hearing; exceptions.

**Cross Reference.** — For the Readable Insurance Policies Act, see § 58-364 et seq.

**Amendment Effective July 1, 1981.** — Session Laws 1979, c. 755, s. 15, will amend this section by substituting "90 days" for "30 days"

in the second paragraph and in the introductory language in the third paragraph.

Session Laws 1979, c. 755, s. 20, contains a severability clause.

### § 58-254.8. Credit accident and health insurance.

**Applied** in *Community Bank v. McKenzie*, 32 N.C. App. 68, 230 S.E.2d 788 (1977).

**Cited** in *State ex rel. Commissioner of Ins. v. Integon Life Ins. Co.*, 28 N.C. App. 7, 220 S.E.2d 409 (1975).

## ARTICLE 26A.

### *Joint Action to Insure Elderly.*

**§§ 58-254.16 to 58-254.18:** Reserved for future codification purposes.

## ARTICLE 26B.

### *North Carolina Health Care Excess Liability Fund.*

**§ 58-254.19. Findings of General Assembly; legislative intent.** — The General Assembly finds that the cost of professional liability insurance has risen to levels which many health care providers find intolerable; and that the cost of one million dollars (\$1,000,000) excess coverage is approximately twice this inflated cost of primary coverage of one hundred-three hundred thousand dollars (\$100,000-\$300,000); and that health care providers in North Carolina are unable to obtain excess liability insurance above one million dollars (\$1,000,000);

that said excess coverage has been made unavailable in the past by the withdrawal of the major health care liability insurer from the State, and there is no assurance that said excess coverage will continue to remain available; and that the ever increasing costs of health care, the inflationary economic trends in North Carolina and the nation, the acceleration of the frequency of claims against North Carolina's health care providers, and the increased risks commensurate with advanced health care treatments and procedures are mandating the necessity of the availability of liability insurance in excess of limits presently obtainable.

The General Assembly further finds that the inability of health care providers to obtain such insurance at reasonable rates is endangering the health of the people of this State, and threatens the curtailment of health care. The General Assembly finds and declares that the uninterrupted delivery of health care services is essential to the health and welfare of the citizens of North Carolina. The General Assembly further finds and declares that it is essential to the health and welfare of the citizens of North Carolina that all health care providers have excess health care liability insurance. It is declared to be the policy and intent of the General Assembly that a health care provider who participates in the plan set forth in this Article, maintains the designated amounts of professional liability protection, and contributes to the fund for the protection of his patients shall be deemed to have fulfilled the objectives of this public policy. (1975, 2nd Sess., c. 978, ss. 1, 2.)

**Editor's Note.** — Session Laws 1975, 2nd Sess., c. 978, s. 4, contains a severability clause.

**§ 58-254.20. Definitions.** — The following terms as used in this Article shall have the meanings hereinafter respectively ascribed to them:

- (1) "Board" means the Board of Governors of the North Carolina Health Care Excess Liability Fund provided for in G.S. 58-254.23.
- (2) "Commissioner" means the Commissioner of Insurance of the State of North Carolina.
- (3) "Fund" means the North Carolina Health Care Excess Liability Fund provided for in G.S. 58-254.21.
- (4) "Health care provider" means any person who pursuant to the provisions of Chapter 90 of the General Statutes is licensed, or is otherwise registered or certified to engage in the practice of, or otherwise performs duties associated with any of the following: medicine, surgery, dentistry, pharmacy, optometry, midwifery, osteopathy, podiatry, chiropractic, radiology, nursing, physiotherapy, pathology, anesthesiology, anesthesia, laboratory analysis, rendering assistance to a physician, dental hygiene, psychiatry, psychology; or a hospital as defined by G.S. 131-126.1(3); or a nursing home as defined by G.S. 130-9(e)(2); or any other person who is legally responsible for the negligence of such person, hospital or nursing home; or any person acting at the direction or under the supervision of a health care provider.
- (5) "Manager" means the person appointed by the Board to administer the fund as provided for in G.S. 58-254.23. (1975, 2nd Sess., c. 978, s. 3.)

**§ 58-254.21. North Carolina Health Care Excess Liability Fund; creation; investment; coverage.** — (a) The North Carolina Health Care Excess Liability Fund is created to be collected and received by the Board for exclusive use for the purposes stated in this Article.

(b) All moneys which belong to the fund and are collected or received under this Article shall be held in trust, deposited in a segregated account, invested and

reinvested by the Board in accordance with the reserve investment requirements of G.S. 58-79.1, and shall not become a part of the general fund of the State. All interest and revenues from moneys belonging to the fund shall inure solely to the benefit and use of the fund. The Board shall be authorized to withdraw funds from such account as amounts payable under G.S. 58-254.26 and other expenses become due and payable. No part of the revenues or assets of the fund shall inure to the benefit of or be distributable to the Board or any member thereof or any officer or employee of the Board, except for services rendered. All expenses and salaries connected with the administration and operation of the fund shall be paid out of the fund.

(c) Profits of the Fund. — The Board shall establish a surplus account which in the sound business judgment of the Board will be sufficient to meet the normal contingencies of its operations. All other profits shall be returned to the participating health care providers by adjustment of the assessments.

(d) Restrictions of Use by State. — No moneys, funds, reserves, investments and property, whether real or personal, acquired, administered, possessed or held by the fund, nor any profits earned by the fund, may be taken, used or appropriated by the State of North Carolina for any purpose whatsoever. (1975, 2nd Sess., c. 978, s. 3.)

**§ 58-254.22. Withdrawals; fidelity bond; fund accounting and audit.** — (a) Moneys shall be withdrawn from the fund only upon vouchers approved and as authorized by the Board.

(b) Persons authorized to receive deposits, withdraw, issue vouchers or otherwise disburse any fund moneys shall post a blanket fidelity bond in an amount to be determined by the Board and reasonably sufficient to protect fund assets. The cost of such bond shall be paid from the fund.

(c) Annually, the Board shall furnish an audited financial report to the Commissioner, the State Auditor and to fund participants upon request. The report shall be prepared by an independent certified public accountant in accordance with accepted accounting procedures.

(d) The Board shall report annually to the General Assembly and the Governor on the financial condition of the fund and its statistical claims experience and may make recommendations as to any further legislative actions which may be needed to carry out the intent of this Article. All such reports shall be made freely available to the public. (1975, 2nd Sess., c. 978, s. 3.)

**§ 58-254.23. Board of Governors; creation; membership; terms; vacancies; powers and duties; manager of fund; immunity from liability of Board members, officers and employees.** — (a) There is hereby created the Board of Governors of the North Carolina Health Care Excess Liability Fund with the power to:

- (1) Adopt such rules and regulations as may be necessary for the interpretation and implementation of this Article.
- (2) Employ such officers and employees as it deems necessary to carry out the provisions of this Article or to perform the duties and exercise the powers conferred upon it by law. The compensation for such officers and employees shall be fixed by the Board.
- (3) Sue and be sued in all actions arising out of any act or omission in connection with the business or affairs of the fund.
- (4) Enter into any contracts or obligations relating to the fund which are authorized or permitted by law, including, but not limited to, contracts for claims-management services such as the evaluation, negotiation, defense and settlement of medical malpractice claims against participating health care providers.

- (5) Conduct all business affairs and perform all acts relating to the fund, whether or not specifically designated in this Article.
- (b) The membership of and appointments to the Board shall be as follows:
- (1) Two members to be appointed by the Lieutenant Governor from a list of two nominees per appointment submitted by the North Carolina Medical Society;
  - (2) Two members to be appointed by the Speaker of the House from a list of two nominees per appointment submitted by the North Carolina Hospital Association;
  - (3) One member to be appointed by the Governor from a list of two nominees submitted by the North Carolina Nurses' Association;
  - (4) One member to be appointed by the Governor from a list of two nominees submitted by the North Carolina Dental Society; and
  - (5) One member from a health care profession other than those enumerated in subdivisions (1) through (4) of this subsection to be appointed by the Governor.
- (c) Members appointed pursuant to this section shall be residents of the State and shall serve terms of four years: Provided that the initial appointees shall serve terms as follows:
- (1) Members appointed by the Governor shall serve initial terms of two, three and four years.
  - (2) Members appointed by the Lieutenant Governor shall serve initial terms of two and three years; and
  - (3) Members appointed by the Speaker of the House shall serve initial terms of two and four years.
- (d) The Commissioner shall be an ex officio member of the Board. The Commissioner or his designee shall have a vote on all matters before the Board.
- (e) Initial appointments to the Board shall be made within 30 days of May 13, 1976. The organizational meeting of the Board shall be held upon the call of the Commissioner and within 30 days after initial appointments are completed.
- (f) Any appointment to fill a vacancy on the Board created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term. At the expiration of each member's term, the appointing authority shall reappoint or replace the member with a member from the same category. At its organizational meeting and on or after July 1 of each year thereafter, the Board shall designate by election one of its members as chairman. The Board shall also elect or appoint, and prescribe the duties of such other officers as the Board deems necessary or advisable, including a secretary and treasurer.
- (g) Any appointing authority shall have the power to remove any member for misfeasance, malfeasance, or nonfeasance in accordance with G.S. 143B-13. Compensation and allowances for members of the Board shall be as provided in G.S. 138-5. The Commission shall not receive said compensation and allowances.
- (h) There shall be a manager of the fund who shall be appointed by the Board. The manager shall conduct the business affairs of the fund under the general direction of the Board. Before entering the duties of the office, the manager shall qualify by giving an official bond approved by the Board. The Board may delegate to the manager of the fund, under such rules and regulations and subject to such conditions as it from time to time prescribes, any power, function or duty conferred by law on the Board in connection with the administration, management and conduct of the business affairs of the fund. The manager may exercise such powers and functions and perform such duties with the same force and effect as the Board.
- (i) There shall not be any personal liability on the part of any member of the Board, or any officer or employee of the fund, for, or on account of, any act performed or obligation entered into in an official capacity, when done in good faith, without intent to defraud, and in connection with the administration,

management, or conduct of the fund or affairs relating thereto. (1975, 2nd Sess., c. 978, s. 3.)

**§ 58-254.24. Participation in the fund.** — (a) When a health care provider has proved to the satisfaction of the Board that he is insured by an insurer licensed and approved by the Commissioner or under a self-insurance plan approved by the Board against legal liability for damages arising out of professional malpractice in the sums required under subsection (b) of this section, and if the health care provider has paid the current assessment required under G.S. 58-254.25, the health care provider shall be deemed to be a bona fide participant in the fund and shall become subject to the provisions of this Article and the rules and regulations of the Board. The financial responsibility requirements herein shall include an obligation of the insurer or self-insurer to defend an action against the participating health care provider irrespective of payment or offer of payment of the limits provided by such insurer or self-insurer.

(b) The minimum amount of professional liability insurance or self-insurance required to be maintained by a participating health care provider shall be one hundred thousand dollars (\$100,000) for each occurrence or claim made and one hundred thousand dollars (\$100,000) aggregate for occurrences or claims made in any one year.

(c) If a health care provider participating in the fund has insurance or self-insurance coverage in excess of the amounts stated in subsection (b) of this section, the Board may grant an appropriate reduction of his assessment for the fund.

(d) The Board shall afford a participating health care provider the same type of coverage, occurrence or claims made, as is provided by his insurer or approved self-insurer in subsection (a) of this section. (1975, 2nd Sess., c. 978, s. 3.)

**§ 58-254.25. Assessment for the fund.** — (a) A health care provider who wishes to participate in the fund and be subject to the provisions of this Article and the rules and regulations of the Board shall, in addition to complying with the provisions of G.S. 58-254.24, not later than the date or dates specified by the Board in each year, pay to the fund an assessment to be determined by the Board.

(b) Moneys received by the Board under subsection (a) of this section shall be handled in accordance with the provisions of G.S. 58-254.21 and 58-254.22.

(c) Any health care provider who carries a claims-made policy or is protected by an approved self-insurance plan and who discontinues participation in the fund may obtain full occurrence coverage from the Board by purchasing a reporting endorsement on the claims-made policy or self-insurance plan by payment of the assessment then required by the Board on the same basis as the insurer or self-insurer requires a reporting endorsement premium to be paid.

(d) The fund shall be subject to the premium tax law as stated in North Carolina G.S. 105-228.5. (1975, 2nd Sess., c. 978, s. 3.)

**§ 58-254.26. Payment of claims by the fund; claims management and services; personal liability for malpractice and amount of compensation not limited; actions against Board or fund.** — (a) Any amount due from a judgment, arbitration award or Board-approved settlement which is in excess of a participating health care provider's insurance or self-insurance coverage required by G.S. 58-254.24 shall be paid from the fund in an amount not to exceed two million dollars (\$2,000,000) for each occurrence or claim made and two million dollars (\$2,000,000) aggregate for occurrences in or claims made in any one year. The purpose of this Article is to afford a participating health care provider with effective excess coverage of \$2,000,000 per occurrence or claim made and \$2,000,000 aggregate per annum.

(b) Payment of claims by the fund as provided in subsection (a) of this section shall only be made when the Board issues a voucher or other appropriate request after the Board receives either of the following:

- (1) A certified copy of a final judgment or arbitration award against a participating health care provider.
- (2) A certified copy of a Board-approved settlement between a participating health care provider and a claimant.

Any and all payments of claims from the fund on behalf of a participating health care provider shall inure to the benefit of said health care provider.

(c) A participating health care provider or his insurer or self-insurer or any claimant shall notify the Board of all claims made or reported or actions filed against said health care provider. Such notice shall be in writing, mailed to the Board within a reasonable time to provide the Board adequate preparation time to defend or negotiate said claim or action, and shall include the date of the alleged occurrence, the date of the making, reporting or filing of said claim or action, and the amount demanded, if declared, by the claimant. The Board shall not pay claims on behalf of or provide the services in subsection (d) of this section to any participating health care provider unless adequate notice to the Board has been provided.

(d) The Board may provide for claims management and services, including the legal defense of participating health care providers in actions filed against them and in settlement negotiations.

(e) Nothing in this Article shall be deemed or construed to:

- (1) Limit the personal liability of any participating health care provider for malpractice arising out of the performance of or failure to perform professional services;
- (2) Limit the amount of compensation from any final judgment, arbitration award or Board-approved settlement to any claimant injured as a result of said malpractice; or
- (3) Permit the filing by any claimant of an action against the Board or fund except upon a final judgment obtained by the claimant against a participating health care provider or upon a Board-approved settlement agreement.

(f) The fund shall not be liable for awards for punitive damages against participating health care providers. (1975, 2nd Sess., c. 978, s. 3.)

**§ 58-254.27. Commencement of operations; effective date of coverage. —**

(a) The fund shall provide the excess coverage provided in this Article only for causes of action arising out of occurrences on or after the effective date of participation of a health care provider.

(b) The Board may provide coverage by the fund when, in the Board's discretion, the fund has sufficient moneys and a sufficient number of participation agreements. (1975, 2nd Sess., c. 978, s. 3.)

**§ 58-254.28. Acceptance of and compliance with Article and rules and regulations of the Board. —** Compliance with the provisions of G.S. 58-254.24 and 58-254.25 shall constitute, on the part of a participating health care provider, a conclusive and unqualified acceptance of the provisions of this Article and the rules and regulations of the Board. (1975, 2nd Sess., c. 978, s. 3.)

**§ 58-254.29. Records. —** Records held by the fund shall not be subject to the provision of Chapter 132 of the General Statutes pertaining to public records. (1975, 2nd Sess., c. 978, s. 3.)

## ARTICLE 27.

*General Regulations.*

**§ 58-260. Discrimination forbidden; right to choose services of optometrist, podiatrist, dentist or chiropractor.** — Discrimination between individuals of the same class in the amount of premiums or rates charged for any policy of insurance covered by this Subchapter, or in the benefits payable thereon, or in any of the terms or conditions of such policy, or in any other manner whatsoever, is prohibited.

Whenever any policy of insurance governed by this Chapter provides for payment of or reimbursement for any service which is within the scope of practice of a duly licensed optometrist, or duly licensed podiatrist, or a duly licensed dentist, or duly licensed chiropractor, or duly licensed practicing psychologist, the insured or other persons entitled to benefits under such policy shall be entitled to payment of or reimbursement for such services, whether such services be performed by a duly licensed physician or a duly licensed optometrist, or a duly licensed podiatrist, or a duly licensed dentist or a duly licensed chiropractor, or a duly licensed practicing psychologist, notwithstanding any provision contained in such policy. Whenever any policy of insurance governed by this Chapter provides for certification of disability which is within the scope of practice of a duly licensed physician, or a duly licensed optometrist, or a duly licensed podiatrist, or a duly licensed dentist, or a duly licensed chiropractor, or a duly licensed practicing psychologist, the insured or other persons entitled to benefits under such policy shall be entitled to payment of or reimbursement for such disability whether such disability be certified by a duly licensed physician, or a duly licensed optometrist, or a duly licensed podiatrist, or a duly licensed dentist, or a duly licensed chiropractor, or a duly licensed practicing psychologist, notwithstanding any provisions contained in such policy. The policyholder, insured, or beneficiary shall have the right to choose the provider of such services notwithstanding any provision to the contrary in any other statute.

For the purposes of this section, a "duly licensed practicing psychologist" shall be defined to only include a psychologist who is duly licensed or certified in the State of North Carolina and has a doctorate degree in psychology and at least two years clinical experience in a recognized health setting, or has met the standards of the National Register of Health Providers in Psychology. (1913, c. 91, s. 11; C. S., s. 6488; 1965, c. 396, s. 2; c. 1169, s. 2; 1967, c. 690, s. 2; 1969, c. 679; 1973, c. 610; 1977, c. 601, ss. 2, 3½.)

**Editor's Note. —**

The 1977 amendment, effective Oct. 1, 1977, in the second paragraph, inserted "or duly licensed practicing psychologist" in the first sentence and "or a duly licensed practicing psychologist" in that sentence and in two places in the second sentence, and added the last paragraph.

Session Laws 1977, c. 601, s. 3, provides: "The right to payment or reimbursement

notwithstanding any provision to the contrary contained in any plan or policy shall be applicable only to those plans and policies entered into, issued, or renewed on or after the effective date hereof, there being no legislative intent to impair or enlarge obligations under any existing contracts."

**§ 58-260.2: Repealed by Session Laws 1975, c. 660, s. 4.**

**Cross References.** — For present provisions as to premium rates for credit accident and health insurance, see §§ 58-348 to 58-350.

**Editor's Note. —** Session Laws 1975, c. 660, s. 3, contains a severability clause. Session Laws 1975, c. 660, s. 5, provides: "The

effective date of this act shall be 90 days after ratification. All credit life and credit accident and health insurance policies, delivered or issued for delivery on or after the effective date of this act shall conform to the provisions of this act. With regard to existing group credit insurance

policies, the rates and forms shall be amended to conform to the requirements of this act, or be terminated, not later than the anniversary of the date of issue of the contract next following the effective date of this act." The act was ratified June 18, 1975.

## SUBCHAPTER VII. FRATERNAL ORDERS AND SOCIETIES.

### ARTICLE 28.

#### *Fraternal Orders.*

**§ 58-268. Conditions precedent to doing business.** — Any such fraternal, beneficiary order, society, or association as defined by this Chapter, chartered and organized in this State or organized and doing business under the laws of any other state, district, province, or territory, having the qualifications required of domestic societies of like character, upon satisfying the Commissioner of Insurance that its business is proper and legitimate and so conducted, may be admitted to transact business in this State upon the same conditions as are prescribed by this Chapter for admitting and authorizing foreign insurance companies to do business in this State, except that such fraternal orders shall not be required to have the capital required of such insurance companies. Organizers or agents shall be licensed without requiring an examination. Provided, organizers or agents who are engaged in or intend to engage in the sale of individual policies of life insurance shall take the examination required of life insurance agents. Those organizers or agents licensed for the sale of insurance pursuant to G.S. 58-268 as of July 1, 1977, shall be exempt from examination. (1899, c. 54, s. 92; 1901, c. 706, s. 2; 1903, c. 438, s. 9; Rev., s. 4798; 1913, c. 46; C. S., s. 6495; 1959, c. 1190; 1977, c. 718.)

**Editor's Note.** — The 1977 amendment, effective July 1, 1977, added the third and fourth sentences.

**§ 58-291. Certain societies not included.** — Nothing contained in this Article shall be construed to affect or apply to societies which limit their membership to any one hazardous occupation, nor to an association of local lodges of a society now doing business in this State which provides death benefits not exceeding five hundred dollars (\$500.00) to any one person, provided, that the Commissioner of Insurance, upon investigation, may, in his discretion, authorize the payment of death benefits not exceeding two thousand dollars (\$2,000) to any one person, or disability benefits not exceeding three hundred dollars (\$300.00) in any one year to any one person, or both, nor to any contracts of reinsurance business on such plan in this State, nor to domestic societies which limit their membership to the employees of a particular city or town, designated firm, business house, or corporation, nor to domestic lodges, orders, or associations of a purely religious, charitable, and benevolent description, which do not provide for a death benefit of more than one hundred dollars (\$100.00), or for disability benefits of more than one hundred and fifty dollars (\$150.00) to any one person in any one year. The Commissioner of Insurance may require from any society such information as will enable him to determine whether such society is exempt from the provisions of this Article. (1913, c. 89, s. 26; C. S., s. 6518; 1925, c. 70, s. 2; 1967, c. 977; 1977, c. 128.)

**Editor's Note.** — The 1977 amendment substituted "two thousand dollars (\$2,000)" for "fifteen hundred dollars (\$1,500)" near the middle of the first sentence.

## SUBCHAPTER VIII. CREDIT LIFE INSURANCE AND CREDIT ACCIDENT AND HEALTH INSURANCE.

### ARTICLE 32.

#### *The North Carolina Act for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance.*

**§ 58-341. Application of Article.** — All credit life insurance and all credit accident and health insurance as defined herein and written in connection with direct loans, consumer credit installment sale contracts of whatever term permitted by G.S. 25A-33 or other credit transactions shall be subject to the provisions of this Article, except credit insurance written in connection with direct loans of more than 10 years' duration. The provisions of this Article shall be controlling as to such insurance and no other provisions of this Chapter shall be applicable unless otherwise specifically provided; nor shall such insurance be subject to the provisions of this Article where the issuance of such insurance is an isolated transaction on the part of the insurer not related to an agreement or a plan for insuring debtors of the creditor.

This Article may be cited as "The North Carolina Act for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance." (1975, c. 660, s. 1.)

**Editor's Note.** — Session Laws 1975, c. 660, s. 3, contains a severability clause.

Session Laws 1975, c. 660, s. 5, provides: "The effective date of this act shall be 90 days after ratification. All credit life and credit accident and health insurance policies, delivered or issued for delivery on or after the effective date of this act shall conform to the provisions of this act.

With regard to existing group credit insurance policies, the rates and forms shall be amended to conform to the requirements of this act, or be terminated, not later than the anniversary of the date of issue of the contract next following the effective date of this act." The act was ratified June 18, 1975.

**§ 58-342. Definitions.** — As used in this Article, unless the context requires otherwise, the following words or terms shall have the meanings herein ascribed to them, respectively:

- (1) "Commissioner" means the Commissioner of Insurance;
- (2) "Credit accident and health insurance" means insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction as defined in G.S. 58-254.8;
- (3) "Credit life insurance" means insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction as defined in G.S. 58-195.2;
- (4) "Credit life insurance agent" means an agent of an insurance company licensed in this State who is authorized to solicit, negotiate or effect credit life insurance or accident and health insurance, or both, but only to the extent as is authorized and limited in this Article;
- (5) "Creditor" means the lender of money or vendor or lessor of goods, services, property, rights or privileges, for which payment is arranged through a credit transaction or any successor to the right, title or interest of any such lender, vendor, or lessor, and an affiliate, associate or subsidiary of any of them or any director, officer or employee of any of them or any other person in any way associated with any of them;

- (6) "Debtor" means a borrower of money or a purchaser or lessee of goods, services, property, rights or privileges for which payment is arranged through a credit transaction;
- (7) "Indebtedness" means the total amount payable for the term of the loan by debtor to creditor in connection with a loan or other credit transaction, including principal, interest, allowable charges, and any premiums authorized hereunder;
- (8) "Joint life coverage" means credit life insurance covering two or more lives, the entire amount of insurance being payable upon the death of the first insured debtor to die. (1975, c. 660, s. 1.)

**§ 58-343. Forms of insurance which are authorized.** — Credit life insurance and credit accident and health insurance shall be issued only in the following forms:

- (1) Individual policies of life insurance issued to debtors on the term plan;
- (2) Individual policies of accident and health insurance issued to debtors on a term plan or disability benefit provisions in individual policies of credit life insurance;
- (3) Group policies of life insurance issued to creditors providing insurance upon the lives of debtors on the term plan;
- (4) Group policies of accident and health insurance issued to creditors on a term plan insuring debtors or disability benefit provisions in group credit life insurance policies to provide such coverage. (1975, c. 660, s. 1.)

**§ 58-344. Amount. — (a) Credit Life Insurance. —**

- (1) Credit life insurance may be written on either a level term or decreasing term plan for an initial amount not in excess of the total amount repayable under the contract of indebtedness. When decreasing term coverage is written in connection with indebtedness repayable on an installment basis, the amount of insurance shall at no time exceed the scheduled or actual amount of unpaid indebtedness, whichever is greater.
- (2) Notwithstanding the provisions of the above subdivision, insurance on seasonal credit line commitments (such as may be found in agricultural credit transactions) not exceeding one year in duration may be written up to the amount of the loan commitment, whether or not the full amount of the commitment has been advanced by the creditor, on a nondecreasing or level term plan.
- (3) Notwithstanding the provisions of subdivision (a)(1) of this or any other section, insurance on education credit transaction commitments may be written for the amount of such commitment whether or not the full amount of the commitment has been advanced by the creditor.

**(b) Credit Accident and Health Insurance. —** The total amount of indemnity payable by credit accident and health insurance in the event of disability, as defined in the policy, shall not exceed the indebtedness; and the amount of each monthly benefit shall not exceed the indebtedness divided by the number of months in the term of the loan. A daily benefit equal in amount to one thirtieth of the scheduled monthly payment is permissible. (1975, c. 660, s. 1.)

**§ 58-345. Term; termination prior to scheduled maturity. —** The term of any credit life insurance or credit accident and health insurance shall, subject to acceptance by the insurer, commence on the date when the debtor becomes obligated to the creditor, except that, where a group policy provides coverage with respect to existing obligations, the insurance on a debtor with respect to such indebtedness shall commence on the effective date of the policy. The term

of such insurance shall not extend more than 15 days beyond the maturity date of the indebtedness or final installment thereof. If the indebtedness is discharged due to prepayment, the insurance in force shall be terminated unless otherwise requested by the insured in writing. If the indebtedness is discharged due to renewal or refinancing prior to such maturity date, the insurance in force shall be terminated before any new insurance may be issued in connection with the renewed or refinanced indebtedness. In all cases of termination prior to scheduled maturity, a refund shall be paid or credited as provided in G.S. 58-351. (1975, c. 660, s. 1.)

**§ 58-346. Insurance to be evidenced by individual policy; notice of proposed insurance or certificate; required and prohibited provisions; when debtor to receive copy.** — (a) All individual credit life insurance and credit accident and health insurance sold shall be evidenced by an individual policy. All group insurance sold where any part of the premium is paid by the debtors or by the creditors from identifiable charges collected from the insured debtors shall be evidenced by a certificate of insurance.

(b) Each individual policy or certificate of credit life insurance, and/or credit accident and health insurance shall set forth the name and home-office address of the insurer, the identity of the insured debtor by name or otherwise, the premium or amount of payment, if any, by the debtor separately for credit life insurance and credit accident and health insurance if not disclosed in other documents furnished to the debtor, a description of the coverage including the amount and term thereof, and any exceptions, limitations or restrictions, and shall state that the benefits shall be paid to the creditor to reduce or extinguish the unpaid indebtedness, and wherever the amount of insurance may exceed the unpaid indebtedness, that any such excess shall be payable to a beneficiary other than the creditor named by the debtor, or to his estate.

(c) No individual policy of credit life insurance or credit accident and health insurance and no group policy of credit life insurance or credit accident and health insurance shall be delivered or issued for delivery in this State unless each contains in substance all of the following provisions:

- (1) In each policy there shall be a provision that the policy, or the policy and application therefor, if any, or if a copy of the application is endorsed upon or attached to the policy when issued, shall constitute the entire insurance contract between the parties, and that all statements made by the creditor or by the individual debtors shall, in the absence of fraud, be deemed representations and not warranties.
- (2) In each such policy there shall be a provision that the validity of the policy shall not be contested, except for nonpayment of premiums, after it has been in force for two years from its date of issue; and that no statement made by any person insured under the policy relating to his insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after such insurance has been in force on such insured for a period of two years during such person's lifetime, and prior to the date on which the claim thereunder arose.
- (3) In each such policy there shall be a provision that when a claim for the death or disability of the insured arises thereunder, settlement shall be made upon receipt of due proof of such death or such disability.
- (4) On the face of each such policy there shall be placed a title which shall briefly and accurately describe the nature and form of the policy.
- (5) Each such policy, including rider and endorsement, shall be identified by a form number in the lower left-hand corner of the first page thereof, and no restriction, condition or provision in or endorsed on such policy shall be valid unless such provision or condition is printed in type as large as eight-point type.

(6) In each such policy there shall be a provision that the insured debtor shall have the right to rescind the insurance policy or certificate of insurance upon giving written notice to the insurer within 15 days from the date the insured debtor received such policy or certificate.

(d) No individual policy of credit life insurance or credit accident and health insurance [and] no group policy of credit life insurance or credit accident and health insurance shall be delivered or issued for delivery in this State if it contains any provision:

(1) Limiting the time within which any action at law or in equity may be commenced to less than three years after the cause of action accrues; or

(2) To the effect that the agent soliciting the insurance is the agent of the person insured under the policy, or making the acts or representations of such agent binding upon the person so insured under the policy.

(e) If said individual policy or certificate of group insurance is not delivered to the debtor at the time the indebtedness is incurred or mailed to the debtor within 30 days thereafter, a written notification must be furnished to the debtor within the 30-day period, which notification shall set forth the following:

(1) The name and home-office address of the insurer;

(2) The identity of the debtor, by name or otherwise;

(3) The premium or identifiable charge to the debtor, if any, separately in connection with credit life insurance and credit accident and health insurance;

(4) The amount and term of the coverage provided, if possible, otherwise a clear description of the means of determining the amount and time of expiry;

(5) A brief description of the coverage provided;

(6) A statement that, if the insurance is declined by the insurer or otherwise does not become effective, any premium or identifiable charge will be refunded or credited to the debtor; and

(7) A statement that, upon acceptance by the insurer, the insurance coverage provided shall become effective as specified in G.S. 58-345.

Any portion of the information required in said notification may be furnished by other documents, if copies of such documents are attached to said notification. If an insurance policy or certificate of insurance is not delivered to the insured debtor at the time the indebtedness is incurred, he shall be furnished at the time the indebtedness is incurred written notice that he shall have the right to rescind the insurance policy or certificate of insurance upon giving written notice to the insurer within 15 days from the date the insured debtor receives such policy or certificate. (1975, c. 660, s. 1.)

**§ 58-347. Forms to be filed with Commissioner; approval or disapproval by Commissioner.** — (a) All forms of policies, certificates of insurance, notices of proposed insurance, endorsements and riders intended for use in this State shall be filed with the Commissioner.

(b) The Commissioner shall, within 30 days after the filing of any such policies, certificates of insurance, notices of proposed insurance, endorsements and riders, disapprove any such form if it contains provisions which are contrary to, or not in accordance with, any provision of this Article or of any rule or regulation promulgated thereunder. Unless disapproved in writing within such 30 days, a form shall be deemed approved.

(c) If the Commissioner notifies the insurer that the form is disapproved, it is unlawful thereafter for such insurer to issue or use such form for a period of 60 days, or until the Commissioner has issued a final order after hearing, whichever is earlier. In such notice, the Commissioner shall specify the reason for his disapproval and state that a hearing will be granted within 20 days after

request in writing by the insurer. No such policy, certificate of insurance, notice of proposed insurance, endorsement or rider shall be issued or used until the expiration of 30 days after it has been so filed, unless the Commissioner shall give his prior written approval thereto.

(d) The Commissioner may, at any time after a hearing held not less than 20 days after written notice to the insurer, withdraw his approval of any such form on any ground set forth in subsection (b) above. The written notice of such hearing shall state the reason for the proposed withdrawal.

(e) No insurer shall issue such forms or use them after the effective date of such withdrawal. (1975, c. 660, s. 1.)

**Cross Reference.** — For the Readable Insurance Policies Act, see § 58-364 et seq.

**Amendment Effective July 1, 1981.** — Session Laws 1979, c. 755, s. 16, effective July 1, 1981, will amend subsection (b) of this section to read as follows:

"(b) The Commissioner shall, within 90 days after the filing of any such policies, certificates of insurance, notices of proposed insurance,

endorsements and riders, disapprove any such form if it contains provisions which are contrary to, or not in accordance with, any provision of this Article, Article 33 of this Chapter, or of any rule or regulation promulgated thereunder. Unless disapproved in writing within such 90 days, a form shall be deemed approved."

Session Laws 1979, c. 755, s. 20, contains a severability clause.

**§ 58-348. General premium rate standard.** — (a) Benefits provided by credit life and credit accident and health insurance written under this Article shall be reasonable in relation to the premium charge. This requirement is satisfied if the premium rates to be charged are no greater than those premium rates set forth in G.S. 58-349 and 58-350 of this Article for benefits as described in those sections. The amount charged to a debtor for any credit life or credit accident and health insurance shall not exceed the premiums charged by the insurer, as computed at the time the charge to the debtor is determined.

(b) The premium or cost of credit life or disability insurance, when written by or through any lender or other creditor, its affiliate, associate or subsidiary shall not be deemed as interest or charges or consideration or an amount in excess of permitted charges in connection with the loan or credit transaction and any gain or advantage to any lender or other creditor, its affiliate, associate or subsidiary, arising out of the premium or commission or dividend from the sale or provision of such insurance shall not be deemed a violation of any other law, general or special, civil or criminal, of this State, or of any rule, regulation or order issued by any regulatory authority of this State.

(c) If premiums are to be determined according to the age of the insured debtor or by age brackets, an insurer may determine premium rates on a basis actuarially consistent with the rates provided in G.S. 58-348, but such rates shall be filed with and approved by the Commissioner. (1975, c. 660, s. 1.)

**§ 58-349. Credit life insurance rate standards.** — (a) The premium rate standards set forth below are applicable to plans of credit life insurance with or without requirements for evidence of insurability:

- (1) Which contain no exclusions or no exclusions other than suicide; and
- (2) Which contain no age restrictions, or only age restrictions not making ineligible for the coverage
  - a. Debtors under 65 at the time the indebtedness is incurred; or
  - b. Debtors who will not have attained age 66 on the maturity date of the indebtedness.

(b) Rates for use with forms which are more restrictive in any material respect shall reflect such variations in the form or lower rates to the extent that a significant difference in claim cost can reasonably be anticipated unless the insurer demonstrates that such lower rate is not appropriate.

(c) If premiums are payable in one sum in advance, for decreasing term life insurance on indebtedness repayable in substantially equal monthly installments, a premium not exceeding eighty cents ( $80\frac{c}{d}$ ) per one hundred dollars (\$100.00) of initial insured indebtedness per year is authorized.

(d) The premium rate of joint life insurance coverage shall not exceed one and two-thirds ( $1\frac{2}{3}$ ) the permitted single life rate.

(e) For level term life insurance, a premium rate of one dollar and fifty cents (\$1.50) per one hundred dollars (\$100.00) per year is authorized.

(f) For policies for which monthly premiums are charged on a basis of the then-outstanding balances, a monthly premium per one thousand dollars (\$1,000) of outstanding balances is authorized, based on the following formula:

$$Op_n = \frac{20}{n+1} SP_n$$

where  $SP_n$  = Single premium rate per one hundred dollars (\$100.00) of initial insured indebtedness repayable in  $n$  equal monthly installments.

$Op_n$  = Monthly outstanding balance premium rate per one thousand dollars (\$1,000).

$n$  = Original repayment period, in months.

(g) For credit life insurance on a basis other than the foregoing, premiums charged shall be actuarially equivalent. (1975, c. 660, s. 1.)

**§ 58-350. Credit accident and health insurance rate standards.** — (a) The rate standards set forth below shall be applicable for contracts which contain a provision excluding or denying claim for disability resulting from preexisting illness, disease or physical condition, for which the debtor received medical advice, consultation, or treatment within the six-month period immediately preceding the effective date of the debtor's coverage and if said disability occurs within the six-month period immediately following such date, but contain no other provision which excludes or restricts liability in the event of disability caused in a certain specified manner, except that they may contain provisions excluding or restricting coverage in the event of pregnancy; intentionally self-inflicted injuries; sickness resulting from intoxication, addiction to alcohol or narcotics, or from the use thereof unless administered on the advice of a physician; flight in nonscheduled aircraft; war; military service; and may contain age restrictions similar to those mentioned for credit life insurance in G.S. 58-349.

(b) A policy of credit accident and health insurance may not define "disability" any more restrictively than the inability of the insured to perform his occupation or any occupation for which he is qualified by education, training or experience.

(c) Any policy to which the rates below apply may require the debtor to be gainfully employed on the effective date of the insurance.

(d) If premiums are payable in one sum in advance for the entire duration of the indebtedness, for insurance with a preexisting exclusion as defined above, the following premiums are authorized:

#### *Single Premium Rates Per \$100 of Initial*

#### *Insured Indebtedness*

<i>No. of Months in which is Repayable</i>	<i>Nonretroactive Benefits</i>			<i>Retroactive Benefits</i>		
	<i>14-Day Wait</i>	<i>30-Day Wait</i>	<i>7-Day Wait</i>	<i>14-Day Wait</i>	<i>30-Day Wait</i>	
1-12	\$1.65	\$1.10	\$3.00	\$ 2.42	\$1.65	
13-24	2.20	1.65	4.00	3.30	2.20	
25-36	2.75	2.20	5.00	4.18	2.75	

<i>No. of Months in which Indebtedness is Repayable</i>	<i>Nonretroactive Benefits</i>	<i>Retroactive Benefits</i>		
	<i>14-Day Wait</i>	<i>30-Day Wait</i>	<i>7-Day Wait</i>	<i>14-Day Wait</i>
37-48	3.30	2.75	6.00	5.06
49-60	3.85	3.30	7.00	5.94
61-72	4.40	3.85		6.82
73-84	4.95	4.40		7.70
85-96	5.50	4.95		8.58
97-108	6.05	5.50		9.46
109-120	6.60	6.05		10.34
				6.60

(e) For policies for which monthly premiums are charged on a basis of the then-outstanding balances, a monthly premium per one thousand dollars (\$1,000) of outstanding balances is authorized, based on the following formula:

$$Op_n = \frac{20}{n + 1} SP_n$$

where  $SP_n$  = Single premium rate per one hundred dollars (\$100.00) of initial indebtedness repayable in  $n$  equal monthly installments.

$Op_n$  = Monthly outstanding balance premium rate per one thousand dollars (\$1,000).

$n$  = Original repayment period, in months.

(f) Premium rate standards for other benefit plans and for indebtedness repayable in installments other than as indicated above shall be actuarially consistent with the above rate standards. (1975, c. 660, s. 1.)

**§ 58-351. Premium refunds or credits.** — (a) Each individual policy or group certificate shall provide that in the event of termination of the insurance prior to the scheduled maturity date of indebtedness, any refund of an amount paid by the debtor for insurance shall be paid or credited promptly to the person entitled thereto.

(b) Except as provided in subsection (c) of this section, the refund of premiums in the case of reducing term credit life insurance or credit accident and health insurance shall be equal to the amount computed by the sum-of-digits formula commonly known as the "Rule of 78"; and the refund of premium in the case of level term credit life insurance shall be equal to the pro rata unearned gross premium.

(c) With respect to insurance written pursuant to G.S. 53-189, the refund of premiums in the case of credit life insurance or credit accident insurance shall be equal to the pro rata unearned gross premiums if refunded during the first 60 days of the policy, and equal to the sum-of-digits formula known as the "Rule of 78" method if refunded thereafter.

(d) No refund need be made if the amount thereof is less than one dollar.

(e) If a creditor requires a debtor to make any payment for credit life insurance or credit accident and health insurance and an individual policy or group certificate of insurance is not issued, the creditor shall immediately give written notice to such debtor and shall promptly make an appropriate credit to the account. (1975, c. 660, s. 1.)

**§ 58-352. Issuance of policies.** — All policies of credit life insurance and credit accident and health insurance shall be delivered or issued for delivery in this State only by an insurer authorized to do an insurance business therein, and shall be issued only through holders of licenses or authorizations issued by the Commissioner. The enrollment of debtors under a group policy issued to a creditor and authorized under this Article shall not constitute the issuance of a policy of insurance. (1975, c. 660, s. 1.)

**§ 58-353. Claims.** — (a) All claims shall be promptly reported to the insurer or its designated claim representative, and the insurer shall maintain adequate claim files. All claims shall be settled as soon as possible and in accordance with the terms of the insurance contract.

(b) All claims shall be paid either by draft drawn upon the insurer or by check of the insurer or be paid by such other specified method upon the direction of the beneficiary who is entitled thereto pursuant to the policy provisions.

(c) No plan or arrangement shall be used whereby any person, firm or corporation other than the insurer or its designated claim representative shall be authorized to settle or adjust claims. The creditor shall not be designated as claim representative for the insurer in adjusting claims; provided, that a group policyholder may, by arrangement with the group insurer, draw drafts or checks in payment of claims due to the group policyholder subject to audit and review by the insurer. (1975, c. 660, s. 1.)

**§ 58-354. Existing insurance; choice of insurer.** — When credit life insurance or credit accident and health insurance is required for any indebtedness, the debtor shall, upon request to the creditor, have the option of furnishing the required amount of insurance through existing policies of insurance owned or controlled by him or of procuring and furnishing the required coverage through any insurer authorized to transact an insurance business within this State. (1975, c. 660, s. 1.)

**§ 58-355. Enforcement.** — The Commissioner may, after notice and hearing, issue rules and regulations necessary for the implementation of this Article. Whenever the Commissioner finds that there has been a violation of this Article or any rules or regulations issued pursuant thereto, and after written notice thereof and hearing given to the insurer or other person authorized or licensed by the Commissioner, he shall set forth the details of his findings together with an order for compliance by a specified date. Such order shall be binding on the insurer and other person authorized or licensed by the Commissioner on the date specified unless sooner withdrawn by the Commissioner or a stay thereof has been ordered by a court of competent jurisdiction. The provisions of G.S. 58-345, 58-346, 58-347, 58-348, 58-349, 58-350, and 58-351 shall not be operative until 90 days after June 18, 1975, and the Commissioner in his discretion may extend by not more than an additional 90 days the initial period within which the provisions of said sections shall not be operative. (1975, c. 660, s. 1.)

**§ 58-356. Judicial review.** — Any party to the proceeding affected by an order of the Commissioner shall be entitled to judicial review by following the procedure set forth in G.S. 58-9.3 to 58-9.6. (1975, c. 660, s. 1.)

**§ 58-357. Penalties.** — In addition to any other penalty provided by law, any person, firm or corporation which willfully violates an order of the Commissioner after it has become final, and while such order is in effect, shall, upon proof thereof to the satisfaction of the court, forfeit and pay to the State of North Carolina a sum not to exceed two hundred fifty dollars (\$250.00) which may be recovered in a civil action, except that if such violation is found to be willful, the amount of such penalty shall be a sum not to exceed one thousand dollars (\$1,000). The Commissioner, in his discretion, may revoke or suspend the license or certificate of authority of the person, firm or corporation guilty of such willful violation. Such order for suspension or revocation shall be upon notice and hearing, and shall be subject to judicial review as provided in G.S. 58-356. Any creditor who requires credit life insurance or credit accident and health insurance, or both, in excess of the amounts set forth in G.S. 58-344 or who violates the provisions of G.S. 58-354 shall be guilty of a misdemeanor, the

penalty for which shall be a fine of five hundred dollars (\$500.00) for each such occurrence or violation. (1975, c. 660, s. 1.)

**§ 58-358. Reinsurance.** — Any insurance company writing credit life or credit accident and health insurance subject to the provisions of this Article may reinsure its liability under any or all of such insurance with any domestic or foreign life insurance company; provided, that in the event such reinsurance is with a company not authorized to do business within this State and such company does not meet the statutory requirements for admission, the direct writing company shall, notwithstanding such reinsurance, maintain all of the reserves required by the Commissioner of such line of business as if such reinsurance contract or treaty had not been entered into and shall continue primarily responsible for such insurance. (1975, c. 660, s. 1.)

**§§ 58-359 to 58-363:** Reserved for future codification purposes.

## SUBCHAPTER IX. READABLE INSURANCE POLICIES.

### ARTICLE 33.

#### *Readable Insurance Policies.*

**§ 58-364. Title.** — This Article is known and may be cited as the "Readable Insurance Policies Act." (1979, c. 755, s. 1.)

**Editor's Note.** — Session Laws 1979, c. 755, s. 20, contains a severability clause.

**§ 58-365. Purpose.** — The purpose of this Article is to provide that insurance policies and contracts be readable by a person of average intelligence, experience, and education. All insurers are required by this Article to use policy and contract forms and, where applicable, benefit booklets that are written in simple and commonly used language, that are logically and clearly arranged, and that are printed in a legible format. (1979, c. 755, s. 1.)

**§ 58-366. Scope of application.** — (a) Except as provided in subsection (b) of this section, the provisions of this Article apply to the policies and contracts of direct insurance that are described in G.S. 58-371(a).

(b) Nothing in this Article applies to:

- (1) Any policy that is a security subject to federal jurisdiction;
- (2) Any group policy covering a group of 1,000 or more lives at date of issue, other than a group credit life insurance policy, nor any group policy delivered or issued for delivery outside of this State; however, this does not exempt any certificate issued pursuant to a group policy delivered or issued for delivery in this State;
- (3) Any group annuity contract that serves as a funding vehicle for pension, profit-sharing, or deferred compensation plans;
- (4) Any form used in connection with, as a conversion from, as an addition to, or in exchange pursuant to a contractual provision for, a policy delivered or issued for delivery on a form approved or permitted to be issued prior to the dates such forms must be approved under this Article;

- (5) The renewal of a policy delivered or issued for delivery prior to the date such policy must be approved under this Article; nor
- (6) Insurers who issue benefit booklets on group and nongroup bases for the policies described in G.S. 58-371(a)(2). In such cases, the provisions of this Article apply to the benefit booklets furnished to the persons insured.

(c) No other provision of the General Statutes setting language simplification standards shall apply to any policy forms covered by this Article.

(d) Any non-English language policy delivered or issued for delivery in this State shall be deemed to be in compliance with this Article if the insurer certifies that such policy is translated from an English language policy which does comply with this Article. (1979, c. 755, s. 1.)

**§ 58-367. Definitions.** — As used in this Article, unless the context clearly indicates otherwise:

- (1) "Benefit booklet" means any written explanation of insurance coverages or benefits issued by an insurer and which is supplemental to and not a part of an insurance policy or contract.
- (2) "Commissioner" means the Commissioner of Insurance.
- (3) "Flesch scale analysis readability score" means a measurement of the ease of readability of an insurance policy or contract made pursuant to the procedures described in G.S. 58-371.
- (4) "Insurance policy or contract" or "policy" means an agreement as defined by G.S. 58-3.
- (5) "Insurer" means every person entering insurance policies or contracts as a principal, as described in G.S. 58-2(2).
- (6) "Person" means any individual, corporation, partnership, association, business trust, or voluntary organization. (1979, c. 755, s. 1.)

**§ 58-368. Format requirements.** — (a) All insurance policies and contracts covered by G.S. 58-371 must be printed in a typeface at least as large as 10 point modern type, one point leaded, be written in a logical and clear order and form, and contain the following items:

- (1) On the cover, first, or insert page of the policy a statement that the policy is a legal contract between the policy owner and the insurer and the statement, printed in larger or other contrasting type or color, "Read your policy carefully";
- (2) An index of the major provisions of the policy, which may include the following items:
  - a. The person or persons insured by the policy;
  - b. The applicable events, occurrences, conditions, losses, or damages covered by the policy;
  - c. The limitations or conditions on the coverage of the policy;
  - d. Definitional sections of the policy;
  - e. Provisions governing the procedure for filing a claim under the policy;
  - f. Provisions governing cancellation, renewal, or amendment of the policy by either the insurer or the policyholder;
  - g. Any options under the policy; and
  - h. Provisions governing the insurer's duties and powers in the event that suit is filed against the insured.

(b) In determining whether or not a policy is written in a logical and clear order and form the Commissioner must consider the following factors:

- (1) The extent to which sections or provisions are set off and clearly identified by titles, headings, or margin notations;

- (2) The use of a more readable format, such as narrative or outline forms;
- (3) Margin size and the amount and use of space to separate sections of the policy; and
- (4) Contrast and legibility of the colors of the ink and paper and the use of contrasting titles or headings for sections. (1979, c. 755, s. 1.)

**§ 58-369. Flesch scale analysis readability score; procedures.** — (a) A Flesch scale analysis readability score will be measured as provided in this section.

(b) For policies containing 10,000 words or less of text, the entire policy must be analyzed. For policies containing more than 10,000 words, the readability of two 200-word samples per page may be analyzed in lieu of the entire policy. The samples must be separated by at least 20 printed lines. For the purposes of this subsection a word will be counted as five printed characters or spaces between characters.

(c) The number of words and sentences in the text must be counted and the total number of words divided by the total number of sentences. The figure obtained must be multiplied by a factor of 1.015. The total number of syllables must be counted and divided by the total number of words. The figure obtained must be multiplied by a factor of 84.6. The sum of the figures computed under this subsection subtracted from 206.835 equals the Flesch scale analysis readability score for the policy.

(d) For the purposes of subsection (c) of this section the following procedures must be used:

- (1) A contraction, hyphenated word, or numbers and letters, when separated by spaces, will be counted as one word;
- (2) A unit of words ending with a period, semicolon, or colon, but excluding headings and captions, will be counted as a sentence; and
- (3) A syllable means a unit of spoken language consisting of one or more letters of a word as divided by an accepted dictionary. Where the dictionary shows two or more equally acceptable pronunciations of a word, the pronunciation containing fewer syllables may be used.

(e) The term "text" as used in this section includes all printed matter except the following:

- (1) The name and address of the insurer; the name, number or title of the policy; the table of contents or index; captions and subcaptions; specification pages, schedules or tables; and
- (2) Any policy language that is drafted to conform to the requirements of any law, regulation, or agency interpretation of any state or the federal government; any policy language required by any collectively bargained agreement; any medical terminology; and any words that are defined in the policy: Provided, however, that the insurer submits with his filing under G.S. 58-370 a certified document identifying the language or terminology that is entitled to be excepted by this subdivision. (1979, c. 755, s. 1.)

**§ 58-370. Filing requirements; duties of the Commissioner.** — (a) No insurer may make, issue, amend, or renew any insurance policy or contract after the dates specified in G.S. 58-371 for the applicable type of insurance unless the policy is in compliance with the provisions of G.S. 58-368 and G.S. 58-369 and unless the policy is filed with the Commissioner for his approval. The policy will be deemed approved 90 days after filing unless disapproved within the 90-day period. The Commissioner may not unreasonably withhold his approval. Any disapproval must be delivered to the insurer in writing and must state the grounds for disapproval. Any policy filed with the Commissioner must be accompanied by a certified Flesch scale readability analysis and test score and

by the insurer's certification that the policy is, in the insurer's judgment, readable based on the factors specified in G.S. 58-368 and G.S. 58-369.

(b) The Commissioner must disapprove any policy covered by subsection (a) of this section if he finds that:

- (1) It is not accompanied by a certified Flesch scale analysis readability score as follows:
  - a. As to policies covered by G.S. 58-371(a)(1): after July 1, 1980, but before July 1, 1981, a score of 40 or more, and after June 30, 1981, a score of 50 or more;
  - b. As to policies covered by G.S. 58-371(a)(2): after July 1, 1981, but before July 1, 1982, a score of 40 or more, and after June 30, 1982, a score of 50 or more.
- (2) It is not accompanied by the insurer's certification that the policy is, in the judgment of the insurer, readable under the standards of this Article; or
- (3) It does not comply with the format requirements of G.S. 58-368. (1979, c. 755, s. 1.)

**§ 58-371. Application to policies; dates; duties of the Commissioner.** — (a) The filing requirements of G.S. 58-370 apply as follows:

- (1) As described in Article 12B of this Chapter, to all policies of private passenger nonfleet motor vehicle insurance, to all policies of insurance against loss to residential real property with not more than four housing units located in this State and any contents thereof and valuable interest therein, and other insurance coverages written in connection with the sale of such property insurance, that are made, issued, amended, or renewed after July 1, 1980; and
- (2) To all policies of life insurance as described in Article 22 of this Chapter, to all benefit certificates issued by fraternal orders and societies as described in Subchapter VII of this Chapter, to all policies of accident and health insurance as described in Subchapter VI of this Chapter, to all subscribers' contracts of hospital, medical, and dental service corporations as described in General Statutes Chapter 57, and to all health maintenance organization evidences of coverage as described in General Statutes Chapter 57A, that are made, issued, amended, or renewed after July 1, 1981.

(b) The Commissioner must make the following reports to the Legislative Research Commission and the General Assembly:

- (1) On or before March 31, 1980, a report detailing and evaluating the efforts made by the Commissioner and insurers to implement the provisions of subdivision (a)(1) of this section, and particularly examining the feasibility and practicality of requiring accident and health and life insurance policies to comply with the provisions of this Article and in the time prescribed;
- (2) On or before March 31, 1981, a report detailing and evaluating:
  - a. The operation of and the extent of compliance with the provisions of this Article;
  - b. The efforts made by the Commissioner and insurers to implement the provisions of subdivision (a)(2) of this section; and
- (3) The Commissioner's recommendations regarding the extension of the application of the provisions of this Article to other lines and types of insurance and his reasons therefor. (1979, c. 755, s. 1.)

**§ 58-372. Construction.** — (a) The provisions of this Article will not operate to relieve any insurer from any provision of law regulating the contents or provisions of insurance policies or contracts nor operate to reduce an insured's

or beneficiary's rights or protection granted under any statute or provision of law.

(b) The provisions of this Article shall not be construed to mandate, require, or allow alteration of the legal effect of any provision of any insurance policy or contract.

(c) In any action brought by a policyholder or claimant arising out of a policy approved pursuant to this Article, the policyholder or claimant may base such an action on either or both (i) the substantive language prescribed by such other statute or provision of law or (ii) the wording of the approved policy. (1979, c. 755, s. 1.)

**Chapter 59.****Partnership.****Article 1.****Uniform Limited Partnership Act.**

Sec.

59-1. Limited partnership defined.

**Article 2.****Uniform Partnership Act.**

Part 3. Relations of Partners to Persons

Dealing with the Partnership.

Sec.

59-46. Partner by estoppel.

**ARTICLE 1.***Uniform Limited Partnership Act.*

**§ 59-1. Limited partnership defined.** — A limited partnership is a partnership formed by two or more individuals, partnership, corporations or other associations under the provisions of G.S. 59-2, having as members one or more general partners and one or more limited partners. The limited partners as such shall not be bound by the obligations of the partnership. (1941, c. 251, s. 1; 1979, c. 97, s. 1.)

**Editor's Note. —**

The 1979 amendment substituted "individuals, partnerships, corporations or other associations" for "persons" near the middle of the first sentence of this section.

For a discussion of partnerships as legal vehicles for historic preservation, see 12 Wake Forest L. Rev. 9 (1976).

**ARTICLE 2.***Uniform Partnership Act.***Part 1. Preliminary Provisions.****§ 59-31. Name of Article.****Editor's Note. —**

For a discussion of partnerships as legal vehicles for historic preservation, see 12 Wake Forest L. Rev. 9 (1976).

Cited in Klein v. Greenberg, 461 F. Supp. 653 (M.D.N.C. 1978).

**Part. 2 Nature of a Partnership.****§ 59-36. Partnership defined.**

A partnership agreement may be inferred without a written or oral contract if the conduct of the parties toward each other is such

that an inference is justified. Williams v. Biscuitville, Inc., 40 N.C. App. 405, 253 S.E.2d 18 (1979).

**§ 59-37. Rules for determining the existence of a partnership.**

A partnership agreement may be inferred without a written or oral contract if the conduct of the parties toward each other is such

that an inference is justified. Williams v. Biscuitville, Inc., 40 N.C. App. 405, 253 S.E.2d 18 (1979).

**Part 3. Relations of Partners to Persons Dealing with the Partnership.**

**§ 59-46. Partner by estoppel.** — (a) When a person, by words spoken or written, by conduct, or by contract, represents himself, or consents to another representing him to anyone, as a partner in an existing partnership or with one or more persons not actual partners, he is liable to any such person to whom such representation has been made, who has, on the faith of such representation, given credit to the actual or apparent partnership, and if he has made such representation or consented to its being made in a public manner, he is liable to such person, whether the representation has or has not been made or communicated to such person so giving credit by or with the knowledge of the

apparent partner making the representation or consenting to its being made.

- (1) When a partnership liability results, he is liable as though he were an actual member of the partnership.
- (2) When no partnership liability results, he is liable jointly with the other persons, if any, so consenting to the contract or representation as to incur liability, otherwise separately.

(1975, c. 732.)

**Editor's Note.** — The 1975 amendment inserted "by conduct" near the beginning of subsection (a).

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

**Evidence that son was authorized to write checks on father's corporate account** does not constitute, in the absence of other fundamental requisites, a partnership in fact. H-K Corp. v. Chance, 25 N.C. App. 61, 212 S.E.2d 34 (1975).

**Representations Made in Public Manner.** — In the absence of representations made by the

defendant personally to third-party creditors and of any expression of consent on the part of the defendant to his son that the son could represent him to be a partner, there is no evidentiary support of the plaintiff's contention that representations were made in a public manner, and under these circumstances, the evidence was not sufficient to warrant submitting the case to the jury upon the theory of partnership by estoppel. H-K Corp. v. Chance, 25 N.C. App. 61, 212 S.E.2d 34 (1975).

#### Part 4. Relations of Partners to One Another.

### § 59-48. Rules determining rights and duties of partners.

**Dairy Partnership Contribution.** — A "milk base" owned by defendant and used by a dairy partnership was a "contribution" to the partnership property as contemplated by

subdivision (1) of this section. Halsey v. Choate, 27 N.C. App. 49, 217 S.E.2d 740, cert. denied, 288 N.C. 730, 220 S.E.2d 350 (1975).

#### Part 6. Dissolution and Winding Up.

### § 59-59. "Dissolution" defined.

**Applied** in H-K Corp. v. Chance, 25 N.C. App. 61, 212 S.E.2d 34 (1975).

### § 59-66. Effect of dissolution on partner's existing liability.

Absent an agreement under § 59-48(1), each partner must contribute towards the losses sustained by the partnership according to his

share of the profits. Longley Supply Co. v. Styron, 26 N.C. App. 55, 214 S.E.2d 777 (1975).

### § 59-69. Rights where partnership is dissolved for fraud or misrepresentation.

**Assertion of Lien on Partnership Assets Where Lien Is Based on Claim of Fraud.** — While it is well settled that each partner has the right to insist that partnership assets be applied in payment of partnership debts, the right is not, in fact, a lien as such, because it is equally well settled that a partner has no individual ownership in any specific assets of the firm. The

right, lien, quasi-lien or whatever else it may be called does not exist for any practical purpose until the affairs of the partnership have to be wound up or the share of a partner has to be ascertained. Such a lien based on fraud does not come into existence until actual dissolution occurs. Wolfe v. Hewes, 41 N.C. App. 88, 254 S.E.2d 204 (1979).

## Chapter 61.

### Religious Societies.

Sec.

**61-7. Governing body of assembly authorized to adopt traffic regulations.**

#### **§ 61-3. Title to lands vested in trustees, or in societies.**

**The words "shall be and remain forever to the use and occupancy of that church..." do not create an exemption for church property from execution.** Floyd S. Pike Elec. Contractor v. Goodwill Missionary Baptist Church, 25 N.C. App. 563, 214 S.E.2d 276 (1975).

These words have to be considered in the context of the time they were written and of wordage required by ancient English law and custom to create a fee simple estate. Floyd S.

Pike Elec. Contractor v. Goodwill Missionary Baptist Church, 25 N.C. App. 563, 214 S.E.2d 276 (1975).

**Sale of Property under Execution.** — There being no provision in our Constitution exempting church property from execution, unless exempted by statute, said property is subject to sale under execution. Floyd S. Pike Elec. Contractor v. Goodwill Missionary Baptist Church, 25 N.C. App. 563, 214 S.E.2d 276 (1975).

#### **§ 61-4. Trustees may convey property.**

**Applied** in Immanuel Baptist Tabernacle Church of Apostolic Faith v. Southern Emmanuel Tabernacle Church, Apostolic Faith, 27 N.C. App. 127, 218 S.E.2d 223 (1975).

**Cited** in Floyd S. Pike Elec. Contractor v. Goodwill Missionary Baptist Church, 25 N.C. App. 563, 214 S.E.2d 276 (1975).

#### **§ 61-6. House on vacant land vests title.**

**Purpose of Section.** — This section was enacted in 1778 for purpose of covering those cases where church houses had been built on unused or unappropriated land to which no one had title. Floyd S. Pike Elec. Contractor v. Goodwill Missionary Baptist Church, 25 N.C. App. 563, 214 S.E.2d 276 (1975).

**Sale of Property under Execution.** — There being no provision in our Constitution exempting church property from execution, unless exempted by statute, said property is subject to sale under execution. Floyd S. Pike Elec. Contractor v. Goodwill Missionary Baptist Church, 25 N.C. App. 563, 214 S.E.2d 276 (1975).

**§ 61-7. Governing body of assembly authorized to adopt traffic regulations.** — (a) The governing body of any religious organization or assembly may by appropriate resolution establish rules and regulations with respect to the use of the streets, roads, alleys, driveways, and parking lots on the grounds or premises owned or under the exclusive control of such organization, and it shall be unlawful for any person to park a motor vehicle or other vehicle on the streets, roads or on the premises of a religious assembly where parking has been prohibited by the religious assembly by the erection of "No Parking" signs at each space on the street, road or on the premises where parking is prohibited. Each space in which parking is prohibited shall be clearly designated as such by a sign no smaller than 24 inches by 24 inches. All rules and regulations adopted pursuant to the authority of this section shall be recorded in the proceedings of said governing body and copies thereof shall be filed in the office of the Secretary of State of North Carolina.

(b) It shall be unlawful for any person to park a motor vehicle or other vehicle in a parking space on the streets, roads, or premises of a religious assembly where the parking space has been designated by the religious assembly as being limited to a named individual or to a person holding a named position with the

assembly; provided, that such private parking space or private parking lot be clearly designated as such by a sign no smaller than 24 inches by 24 inches prominently displayed at the entrance to the parking lot, if within a parking lot, and provided further that the private parking spaces within the lot or the private parking spaces on the streets, roads or on the premises of the religious assembly be clearly marked by signs setting forth the name of each individual for whom the space is reserved or the name of the position held with the assembly for which space is reserved.

(c) It shall be unlawful for any person to park a motor vehicle or other vehicle on the streets or roads of a religious assembly, except where parking is expressly designated, so as to interfere with, or obstruct the free flow of vehicular traffic on the streets or roads within the assembly grounds.

(d) It shall be unlawful for any person to park a motor vehicle or other vehicle at the entrance to any driveway on the grounds of a religious assembly so as to block the driveway.

(e) Any vehicle parked in violation of subsections (a), (b), (c), or (d) may be removed by the assembly, or its agents, or its employees to a place of storage and the registered owner of such motor vehicle shall become liable for removal and storage charges. The assembly, nor any party acting under the directions of the assembly, shall be held to answer any civil or criminal action to any owner, lienholder, or other person legally entitled to the possession of any motor vehicle removed from such parking space or parking lot pursuant to subsections (a), (b), (c), or (d) except where such motor vehicle is willfully, maliciously or negligently damaged in the removal from the aforesaid space to place of storage.

(f) A "religious assembly" is defined as being a corporation or association formed for the purpose of providing a resort community for religious and recreational purposes and where the streets and roads are solely maintained by the religious assembly without governmental funds. (1977, c. 398, s. 1.)

**Chapter 62.****Public Utilities.****Article 1.****General Provisions.**

Sec.

- 62-2. Declaration of policy.  
62-3. Definitions.

**Article 2.****Organization of Utilities Commission.**

- 62-10. Number; appointment; terms; qualifications; chairman; vacancies; compensation; other employment prohibited.  
62-13. Chairman to direct Commission.  
62-14. Commission staff; structure and function.  
62-15. Office of executive director; public staff, structure and function.  
62-16. [Repealed.]  
62-17. Annual reports; monthly or quarterly release of certain information; publication of procedural orders and decisions.  
62-19. Public record of proceedings; chief clerk; seal.  
62-20. Participation by Attorney General in Commission proceedings.  
62-21. [Repealed.]

**Article 3.****Powers and Duties of Utilities Commission.**

- 62-34. To investigate companies under its control; visitation and inspection.  
62-37. Investigations.  
62-48. Appearance before courts and agencies.  
62-50. Safety standards for gas pipeline facilities.  
62-51. To inspect books and records of corporations affiliated with public utilities.

**Article 4.****Procedure before the Commission.**

- 62-60.1. Commission to sit in panels of three.  
62-70. Ex parte communications.  
62-71. Hearings to be public; record of proceedings.  
62-76. Hearings by Commission, panel of three commissioners, single commissioner, or examiner.  
62-77. Recommended decision of panel of three commissioners, single commissioner or examiner.  
62-78. Proposed findings, briefs, exceptions, orders, expediting cases, and other procedure.

Sec.

- 62-81. Special procedure in hearing and deciding rate cases.  
62-82. Special procedure on application for certificate for generating facility; appeal from award order.

**Article 5.****Review and Enforcement of Orders.**

- 62-90. Right of appeal; filing of exceptions.  
62-91. Appeal docketed; title on appeal; priorities on appeal.  
62-94. Record on appeal; extent of review.

**Article 6.****The Utility Franchise.**

- 62-110.1. Certificate for construction of generating facility; analysis of long-range needs for expansion of facilities.

**Article 7.****Rates of Public Utilities.**

- 62-133. How rates fixed.  
62-134. Change of rates; notice; suspension and investigation.  
62-138. Utilities to file rates, service regulations and service contracts with Commission; publication; certain telephone service prohibited.  
62-140. Discrimination prohibited.  
62-152.1. Uniform rates; joint rate agreements among carriers.  
62-155. Electric power rates to promote conservation.  
62-156 to 62-159. [Reserved.]

**Article 12.****Motor Carriers.**

- 62-260. Exemptions from regulations.  
62-266. Interstate carriers.  
62-268. Security for protection of public; liability insurance.

**Article 14.****Fees and Charges.**

- 62-300. Particular fees and charges fixed; payment.

**Article 15.****Penalties and Actions.**

- 62-327. Gifts to members of Commission, Commission employees, or public staff.  
62-328 to 62-332. [Reserved.]

**Article 16.****Security Provisions.**

Sec.

62-333. Screening employment applications.

**ARTICLE 1.***General Provisions.***§ 62-1. Short title.****Editor's Note. —**

Session Laws 1975, c. 243, ss. 1 and 11, provide:

"Section 1. This act shall not terminate the preexisting commission or appointments thereto, or any certificates, permits, orders, rules or regulations issued by it or any other action taken by it, unless and until revoked by it, nor affect in any manner the existing franchise, territories, tariffs, rates, contracts, service regulations and other obligations and rights of public utilities, unless and until altered or modified by or in accordance with the provisions of Chapter 62 of the General Statutes.

"Sec. 11. Except as herein amended, the provisions of Chapter 62 of the General Statutes of North Carolina shall remain in full force and

effect. To the extent that other laws or clauses of laws are in conflict with the provisions of this act, such laws and clauses are, to that extent, hereby repealed."

**Scope of Regulatory Authority. —** The Utilities Commission, being an administrative agency created by statute, has no regulatory authority except such as is conferred upon it by this Chapter, and the Commission may not, by its order, require or authorize a rule or practice by a public utility company which is forbidden by statute, or authorize such company to refuse to perform a duty imposed upon it by statute, unless this Chapter has conferred such authority upon the Commission. *State ex rel. Utilities Comm'n v. National Merchandising Corp.*, 288 N.C. 715, 220 S.E.2d 304 (1975).

**§ 62-2. Declaration of policy. —** Upon investigation, it has been determined that the rates, services and operations of public utilities as defined herein, are affected with the public interest and that the availability of an adequate and reliable supply of electric power and natural gas to the people, economy and government of North Carolina is a matter of public policy. It is hereby declared to be the policy of the State of North Carolina:

- (1) To provide fair regulation of public utilities in the interest of the public;
- (2) To promote the inherent advantage of regulated public utilities;
- (3) To promote adequate, reliable and economical utility service to all of the citizens and residents of the State;
- (4) To provide just and reasonable rates and charges for public utility services without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices and consistent with long-term management and conservation of energy resources by avoiding wasteful, uneconomic and inefficient uses of energy;
- (4a) To assure that facilities necessary to meet future growth can be financed by the utilities operating in this State on terms which are reasonable and fair to both the customers and existing investors of such utilities; and to that end to authorize fixing of rates in such a manner as to result in lower costs of new facilities and lower rates over the operating lives of such new facilities by making provisions in the rate-making process for the investment of public utilities in plant under construction;
- (5) To encourage and promote harmony between public utilities, their users and the environment;
- (6) To foster the continued service of public utilities on a well-planned and coordinated basis that is consistent with the level of energy needed for the protection of public health and safety and for the promotion of the general welfare as expressed in the State energy policy;

- (7) To seek to adjust the rate of growth of regulated energy supply facilities serving the State to the policy requirements of statewide development; and
- (8) To cooperate with other states and with the federal government in promoting and coordinating interstate and intrastate public utility service and reliability of public utility energy supply.

To these ends, therefore, authority shall be vested in the North Carolina Utilities Commission to regulate public utilities generally, their rates, services and operations, and their expansion in relation to long-term energy conservation and management policies and statewide development requirements, and in the manner and in accordance with the policies set forth in this Chapter. Nothing in this Chapter shall be construed to imply any extension of Utilities Commission regulatory jurisdiction over any industry or enterprise that is not subject to the regulatory jurisdiction of said Commission. (1963, c. 1165, s. 1; 1975, c. 877, s. 2; 1977, c. 691, s. 1.)

**Editor's Note.** — The 1975 amendment, effective July 1, 1975, rewrote this section.

The 1977 amendment added subdivision (4a).

Session Laws 1975, c. 877, s. 5, contains a severability clause.

Session Laws 1977, c. 691, s. 4, provides: "This act shall become effective with respect to rate applications filed with the North Carolina Utilities Commission on and after July 1, 1979."

For survey of 1976 case law dealing with administrative law, see 55 N.C.L. Rev. 898 (1977).

#### Purpose of Chapter. —

The provisions of this Chapter, such as § 62-133, designed to assure the utility of adequate revenues, are in the nature of corollaries to the basic proposition that the public is entitled to adequate service at reasonable rates and safeguards against administrative action which would violate constitutional protections by confiscation of the utility's property. Without such assurance, the owners of capital would not invest it in the utility's bonds or stock and the utility could not provide the plant necessary for the rendering of adequate service. State ex rel. Utilities Comm'n v. General Tel. Co. of Southeast, 285 N.C. 671, 208 S.E.2d 681 (1974).

The primary purpose of this Chapter is not to guarantee to the stockholders of a public utility constant growth in the value of and in the dividend yield from their investment, but is to assure the public of adequate service at a reasonable charge. State ex rel. Utilities Comm'n v. General Tel. Co. of Southeast, 285 N.C. 671, 208 S.E.2d 681 (1974).

The entire Chapter is a single, integrated plan. State ex rel. Utilities Comm'n v. General Tel. Co.

of Southeast, 285 N.C. 671, 208 S.E.2d 681 (1974).

The purpose of the Public Utilities Act is to put the policies enumerated in this section into effect. State ex rel. Utilities Comm'n v. Edmisten, 294 N.C. 598, 242 S.E.2d 862 (1978).

**Recovery of Reasonable Cost of Approved Gas Exploration Projects.** — The Commission, in ordering that the reasonable costs of approved exploration projects were to be recoverable through tracking rate increases, acted within its acknowledged duty and authority to compel adequate and efficient utility service to the citizens of this State where it was clear from the Commission's findings that, without additional gas supplies, the gas utilities would be unable to render adequate service to their customers, that exploration programs were the most feasible means for obtaining these additional supplies, and that the utilities were unable, through traditional methods of financing, to fund sufficient exploration projects to obtain these supplies. State ex rel. Utilities Comm'n v. Edmisten, 294 N.C. 598, 242 S.E.2d 862 (1978).

**North Carolina rates may not be structured by external system usage.** Such action is outside the intended scope of the Commission's authority under this section. State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 424, 230 S.E.2d 647 (1976).

**Applied in State ex rel. Utilities Comm'n v. National Merchandising Corp.,** 288 N.C. 715, 220 S.E.2d 304 (1975); State ex rel. Utilities Comm'n v. Edmisten, 26 N.C. App. 662, 217 S.E.2d 201 (1975).

**§ 62-3. Definitions.** — As used in this Chapter, unless the context otherwise requires, the term:

- (23) a. "Public utility" means a person, whether organized under the laws of this State or under the laws of any other state or country, now or hereafter owning or operating in this State equipment or facilities for:

1. Producing, generating, transmitting, delivering or furnishing electricity, piped gas, steam or any other like agency for the production of light, heat or power to or for the public for compensation; provided, however, that the term "public utility" shall not include persons who construct or operate an electric generating facility, the primary purpose of which facility is for such person's own use and not for the primary purpose of producing electricity, heat, or steam for sale to or for the public for compensation.
  2. Diverting, developing, pumping, impounding, distributing or furnishing water to or for the public for compensation, or operating a public sewerage system for compensation; provided, however, that the term "public utility" shall not include any person or company whose sole operation consists of selling water to less than 10 residential customers, except that any person or company which constructs a water system in a subdivision with plans for 10 or more lots and which holds itself out by contracts or other means at the time of said construction to serve an area containing more than 10 residential building lots shall be a public utility at the time of such planning or holding out to serve such 10 or more building lots, without regard to the number of actual customers connected;
  3. Transporting persons or property by street, suburban or interurban bus or railways for the public for compensation;
  4. Transporting persons or property by railways or motor vehicles, or any other form of transportation or express service for the public for compensation, except motor carriers exempted in G.S. 62-260, and except carriers by air;
  5. Transporting or conveying gas, crude oil or other fluid substance by pipeline for the public for compensation;
  6. Conveying or transmitting messages or communications by telephone or telegraph, or any other means of transmission, where such service is offered to the public for compensation.
- b. The term "public utility" shall for rate-making purposes include any person producing, generating or furnishing any of the foregoing services to another person for distribution to or for the public for compensation.
  - c. The term "public utility" shall include all persons affiliated through stock ownership with a public utility doing business in this State as parent corporation or subsidiary corporation as defined in G.S. 55-2 to such an extent that the Commission shall find that such affiliation has an effect on the rates or service of such public utility.
  - d. The term "public utility," except as otherwise expressly provided in this Chapter, shall not include a municipality, an authority organized under the North Carolina Water and Sewer Authorities Act, electric or telephone membership corporation or nonprofit water membership or consumer-owned corporations financed by the Farmers Home Administration, the United States Department of Housing and Urban Development, or any similar or successor federal financing agency, provided, that (i) any such financing administration, department or agency exercise substantial control over and regulation of any such corporation's rates and terms and conditions of service, and (ii) the members or consumer-owners of any such corporation, pursuant to the corporation's articles of incorporation and bylaws, shall elect the governing board of the corporation; or any person not otherwise a public utility who

furnishes such service or commodity only to himself, his employees or tenants when such service or commodity is not resold to or used by others; provided, however, that any person other than a nonprofit organization serving only its members, who distributes or provides utility service to his employees or tenants by individual meters or by other coin-operated devices with a charge for metered or coin-operated utility service shall be a public utility within the definition and meaning of this Chapter with respect to the regulation of rates and provisions of service rendered through such meter or coin-operated device imposing such separate metered utility charge. If any person conducting a public utility shall also conduct any enterprise not a public utility, such enterprise is not subject to the provisions of this Chapter.

- e. The term "public utility" shall include the University of North Carolina insofar as said University supplies telephone service, electricity or water to the public for compensation from the University Enterprises defined in G.S. 116-41.1(9).
  - f. The term "public utility" shall include the Town of Pineville insofar as said town supplies telephone services to the public for compensation. The territory to be served by the Town of Pineville in furnishing telephone services, subject to the Public Utilities Act, shall include the town limits as they exist on May 8, 1973, and shall also include the area proposed to be annexed under the town's ordinance adopted May 3, 1971, until January 1, 1975.
- (30) "Panel" means a panel of three commissioners, a division of the Utilities Commission authorized for the purpose of carrying out certain functions of the Commission. (1913, c. 127, s. 7; C. S., s. 1112(b); 1933, c. 134, ss. 3, 8; c. 307, s. 1; 1937, c. 108, s. 2; 1941, cc. 59, 97; 1947, c. 1008, s. 3; 1949, c. 1132, s. 4; 1953, c. 1140, s. 1; 1957, c. 1152, s. 13; 1959, c. 639, ss. 12, 13; 1963, c. 1165, s. 1; 1967, c. 1094, ss. 1, 2; 1971, c. 553; c. 634, s. 1; cc. 894, 895; 1973, c. 372, s. 1; 1975, c. 243, s. 2; cc. 254, 415; 1979, c. 652, s. 1.)

**Editor's Note. —**

The first 1975 amendment added subdivision (30).

The second 1975 amendment inserted "an authority organized under the North Carolina Water and Sewer Authorities Act" near the beginning of the first sentence of paragraph d of subdivision (23).

The third 1975 amendment substituted the language beginning "or consumer-owned corporations" and ending "the governing board of the corporation" for "corporations financed by the Farmers Home Administration" near the beginning of the first sentence of paragraph d of subdivision (23).

The 1979 amendment added the proviso at the end of paragraph a1 of subdivision (23).

As the rest of the section was not changed by the amendments, only the introductory language and subdivisions (23) and (30) are set out.

**A mobile radio service, etc. —**

The applicant, a medical doctor, whose communication service consisting of seven two-way radios, three "beeper" radio devices and one base station, and is providing service

only to 10 other members of the County Medical Society, is engaged in the operation of a public utility within the meaning of §§ 62-3(23)a6 and 62-119(3). State ex rel. Utilities Comm'n v. Simpson, 32 N.C. App. 543, 232 S.E.2d 871 (1977), aff'd, 295 N.C. 519, 246 S.E.2d 753 (1978).

"Public" means the **whole body politic**, the body of the people at large, the people as a whole. State ex rel. Utilities Comm'n v. Edmisten, 40 N.C. App. 109, 252 S.E.2d 516 (1979).

**Test of System as Public Utility. —** One test to determine whether a plant or system is a public utility is whether the public may enjoy it by right or by permission only. It is immaterial that the service is limited to a specified area and that the facilities are limited in capacity. State ex rel. Utilities Comm'n v. Edmisten, 40 N.C. App. 109, 252 S.E.2d 516 (1979).

Whether any given enterprise is a public utility within the meaning of a regulatory scheme does not depend on some abstract, formulistic definition of "public" to be thereafter universally applied. What is the "public" in any given case depends rather on the regulatory circumstances of that case. Some of

these circumstances are: (1) nature of the industry sought to be regulated; (2) type of market served by the industry; (3) the kind of competition that naturally inheres in that market; and (4) effect of nonregulation or exemption from regulation of one or more persons engaged in the industry. The meaning of "public" must in the final analysis be such as will, in the context of the regulatory circumstances, accomplish the legislature's purpose and comport with its public policy. State ex rel. Utilities Comm'n v. Simpson, 295 N.C. 519, 246 S.E.2d 753 (1978).

**The fact that a corporation has the authority to, and does, engage in private business in addition to its public service does not deprive it of its status as a public service corporation.** A public service (public utility) corporation having the power of eminent domain makes such corporation amenable to State control through the Utilities Commission. State ex rel. Utilities Comm'n v. Edmisten, 40 N.C. App. 109, 252 S.E.2d 516 (1979).

**Extension of Rate Increase Unauthorized.** — The contention of the companies and the Commission that other provisions of this Chapter, including subdivision (24) of this section authorizing the Commission to fix reasonable and just rates for public utility service, permit the Commission to extend its previously authorized rate increases "based solely upon the increased cost of fuel" beyond Sept. 1, 1975, contrary to the mandate of § 62-134(e), is utterly without merit. It is well established that when there are two statutes, one dealing specifically with the matter in issue and the other being in general terms which, nothing else appearing, would include the matter in question, the specific statute controls. State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 451, 232 S.E.2d 184 (1977).

**The word "rate" used in the Public Utilities Act refers not only to the monetary amount which each customer must ultimately pay but also to the published method or schedule by which that amount is figured.** State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 327, 230 S.E.2d 651 (1976).

**Rate Formula Permissible.** — The definition of "rate" contained in this section is worded in such a broad manner as to encompass the use of a formula, and the fact that the formula must be computed each month does not render it so imprecise as to be statutorily impermissible. State ex rel. Utilities Comm'n v. Edmisten, 26 N.C. App. 662, 217 S.E.2d 201 (1975), aff'd. 291 N.C. 361, 230 S.E.2d 671 (1976).

**Multistate Foreign Corporation.** — There is nothing in the language of Article 8 or of the Public Utilities Act generally to support the contention that Article 8 is not applicable to a multistate foreign corporation engaged in interstate commerce. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 22 N.C. App. 714, 207 S.E.2d 771 (1974), aff'd, 288 N.C. 201, 217 S.E.2d 543 (1975).

The General Assembly intended Article 8 to apply to all public utilities doing business in this State whether they be foreign or domestic corporations and even though they are also engaged in interstate commerce. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 288 N.C. 201, 217 S.E.2d 543 (1975).

The delivery by a Tennessee corporation domesticated to do business in this State of its power to Tennessee Valley Authority and the distribution by TVA of that power under pooling and apportionment agreements to North Carolina utilities for distribution in North Carolina was the furnishing of electricity "to another for distribution to or for the public for compensation" within the meaning of paragraph (23)b of this section. State ex rel. Utilities Comm'n v. Edmisten, 40 N.C. App. 109, 252 S.E.2d 516 (1979).

**Applied** in State ex rel. Utilities Comm'n v. National Merchandising Corp., 288 N.C. 715, 220 S.E.2d 304 (1975).

**Quoted** in State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 424, 230 S.E.2d 647 (1976); State ex rel. North Carolina Util. Comm'n v. Transylvania Util. Co., 30 N.C. App. 336, 226 S.E.2d 824 (1976).

## ARTICLE 2.

### *Organization of Utilities Commission.*

**§ 62-10. Number; appointment; terms; qualifications; chairman; vacancies; compensation; other employment prohibited.** — (a) The North Carolina Utilities Commission shall consist of seven commissioners who shall be appointed by the Governor subject to confirmation by the General Assembly in joint session. The names of commissioners to be appointed by the Governor shall be submitted by the Governor to the General Assembly for confirmation by the General Assembly on or before May 1, of the year in which the terms for which the appointments are to be made are to expire. Upon failure of the Governor to

submit names as herein provided, the Lieutenant Governor and Speaker of the House jointly shall submit the names of a like number of commissioners to the General Assembly on or before May 15 of the same year for confirmation by the General Assembly. Regardless of the way in which names of commissioners are submitted, confirmation of commissioners must be accomplished prior to adjournment of the then current session of the General Assembly. This subsection shall be subject to the provisions of subsection (c) of this section.

(b) The terms of the commissioners now serving shall expire at the conclusion of the term for which they were appointed which shall remain as before with two regular eight-year terms expiring on July 1 of each fourth year after July 1, 1965, and the fifth term expiring on July 1 of each eighth year after July 1, 1963. The terms of office of utilities commissioners thereafter shall be eight years commencing on July 1 of the year in which the predecessor terms expired, and ending on July 1 of the eighth year thereafter.

(c) In order to increase the number of commissioners to seven, the names of two additional commissioners shall be submitted to the General Assembly on or before May 27, 1975, for confirmation by the General Assembly as provided in G.S. 62-10(a). The commissioners so appointed and confirmed shall serve new terms commencing on July 1, 1975, one of which shall be for a period of two years (with the immediate successor serving for a period of six years), and one of which shall be for a period of two years.

Thereafter, the terms of office of the additional commissioners shall be for eight years as provided in G.S. 62-10(b).

(d) A commissioner in office shall continue to serve until his successor is duly confirmed and qualified but such holdover shall not affect the expiration date of such succeeding term.

(e) On July 1, 1965, and every four years thereafter, one of the commissioners shall be designated by the Governor to serve as chairman of the Commission for the succeeding four years and until his successor is duly confirmed and qualifies. Upon death or resignation of the commissioner appointed as chairman, the Governor shall designate the chairman from the remaining commissioners and appoint a successor as hereinafter provided to fill the vacancy on the Commission.

(f) In case of death, incapacity, resignation or vacancy for any other reason in the office of any commissioner prior to the expiration of his term of office, the name of his successor shall be submitted by the Governor within four weeks after the vacancy arises to the General Assembly for confirmation by the General Assembly. Upon failure of the Governor to submit the name of the successor, the Lieutenant Governor and Speaker of the House jointly shall submit the name of a successor to the General Assembly within six weeks after the vacancy arises. Regardless of the way in which names of commissioners are submitted, confirmation of commissioners must be accomplished prior to the adjournment of the then current session of the General Assembly.

(g) If a vacancy arises or exists pursuant to either subsection (a) or (c) or (f) of this section when the General Assembly is not in session, and the appointment is deemed urgent by the Governor, the commissioner may be appointed and serve on an interim basis pending confirmation by the General Assembly.

(h) The salary of each commissioner shall be the same as that fixed from time to time for judges of the superior court except that the commissioner designated as chairman shall receive one thousand dollars (\$1,000) additional per annum.

(i) The standards of judicial conduct provided for judges in Article 30 Chapter 7A of the General Statutes shall apply to members of the Commission. Members of the Commission shall be liable to impeachment for the causes and in the manner provided for judges of the General Court of Justice in Chapter 123 of the General Statutes. Members of the Commission shall not engage in any other employment, business, profession, or vocation while in office.

(j) Members of the Commission shall be reimbursed for travel and subsistence expenses at the rates allowed to State officers and employees by G.S. 138-6(a). (1941, c. 97, s. 2; 1949, c. 1009, s. 1; 1959, c. 1319; 1963, c. 1165, s. 1; 1967, c. 1238; 1975, c. 243, s. 3; c. 867, ss. 1, 2; 1977, c. 468, s. 1; c. 913, s. 2.)

**Editor's Note.** —

The first 1975 amendment rewrote this section.

The second 1975 amendment added the second sentence in subsection (e), designated the last sentence in subsection (f) as new subsection (g) and inserted "a vacancy arises or exists pursuant to either subsection (a) or (c) or (f) of this section when" in that new subsection and designated former subsections (g) and (h) as present subsections (h) and (i).

The first 1977 amendment, effective July 1, 1977, added a second sentence to subsection (a),

which sentence was deleted by the second 1977 amendment, reenacted subsection (h) without change, rewrote subsection (i), and added subsection (j).

The second 1977 amendment deleted the second sentence added by the first 1977 amendment, which read "Not less than two members of the Commission shall be persons licensed to practice law in North Carolina."

Session Laws 1977, c. 468, s. 21, contains a severability clause.

**§ 62-13. Chairman to direct Commission.** — (a) The chairman shall be the chief executive and administrative officer of the Commission.

(b) The chairman shall determine whether matters pending before the Commission shall be considered or heard initially by the full Commission, a panel of three commissioners, a hearing commissioner, or a hearing examiner. Subject to the rules of the Commission, the chairman shall assign members of the Commission to proceedings and shall assign members to preside at proceedings before the full Commission or a panel of three commissioners.

(c) The chairman, the presiding commissioner, hearing commissioner, or hearing examiner shall hear and determine procedural motions or petitions not determinative of the merits of the proceedings and made prior to hearing; and at hearing shall make all rulings on motions and objections.

(d) The chairman acting alone, or any three commissioners, may initiate investigations, complaints, or any other proceedings within the jurisdiction of the Commission. (1941, c. 97, s. 4; 1957, c. 1062, s. 2; 1963, c. 1165, s. 1; 1975, c. 243, ss. 9, 10; 1977, c. 468, s. 2; c. 913, s. 2.)

**Editor's Note.** — The 1975 amendment substituted "panel of three commissioners" for "division of the Commission" in the first sentence, and "panel" for "division" in the second sentence, of subsection (b).

The first 1977 amendment, effective July 1, 1977, rewrote subsections (a) and (b), added present subsection (c), deleted "any" preceding "investigations" in present subsection (d), which was formerly subsection (c), and deleted former

subsection (d), which provided for approval by the chairman of all maintenance, subsistence and travel expense of members of the Commission and its employees.

The second 1977 amendment deleted "law" following "shall assign" in the second sentence of subsection (b) as set out in the first 1977 amendment.

Session Laws 1977, c. 468, s. 21, contains a severability clause.

**§ 62-14. Commission staff; structure and function.** — (a) The Commission is authorized and empowered to employ hearing examiners; court reporters; a chief clerk and deputy clerk; a commission attorney and assistant commission attorney; transportation and pipeline safety inspectors; and such other professional, administrative, technical, and clerical personnel as the Commission may determine to be necessary in the proper discharge of the Commission's duty and responsibility as provided by law. The chairman shall organize and direct the work of the Commission staff.

(b) The salaries and compensation of all such personnel shall be fixed in the manner provided by law for fixing and regulating salaries and compensation by other State agencies.

(c) The chairman, within allowed budgetary limits and as allowed by law, shall authorize and approve travel, subsistence and related expenses of such personnel, incurred while traveling on official business. (1963, c. 1165, s. 1; 1977, c. 468, s. 3.)

**Editor's Note.** — The 1977 amendment, effective July 1, 1977, rewrote this section. Session Laws 1977, c. 468, s. 21, contains a severability clause.

**§ 62-15. Office of executive director; public staff, structure and function.** — (a) There is established in the Commission the office of executive director, whose salary shall be the same as that fixed for members of the Commission. The executive director shall be appointed by the Governor subject to confirmation by the General Assembly in joint session. The name of the executive director appointed by the Governor shall be submitted to the General Assembly on or before May 1 of the year in which the term of his office begins. The term of office for the executive director shall be six years, and the initial term shall begin July 1, 1977. The executive director may be removed from office by the Governor in the event of his incapacity to serve; and the executive director shall be removed from office by the Governor upon the affirmative recommendation of a majority of the Commission, concurred in by a majority of the Utility Review Committee of the General Assembly. In case of a vacancy in the office of executive director for any reason prior to the expiration of his term of office, the name of his successor shall be submitted by the Governor to the General Assembly, not later than four weeks after the vacancy arises. If a vacancy arises in the office when the General Assembly is not in session, the executive director shall be appointed by the Governor to serve on an interim basis pending confirmation by the General Assembly.

(b) There is established in the Commission a public staff. The public staff shall consist of the executive director and such other professional, administrative, technical, and clerical personnel as may be necessary in order for the public staff to represent the using and consuming public, as hereinafter provided. All such personnel shall be appointed, supervised, and directed by the executive director. The public staff shall not be subject to the supervision, direction, or control of the Commission, the chairman, or members of the Commission.

(c) Except for the executive director, the salaries and compensation of all such personnel shall be fixed in the manner provided by law for fixing and regulating salaries and compensation by other State agencies.

(d) It shall be the duty and responsibility of the public staff to

- (1) Review, investigate, and make appropriate recommendations to the Commission with respect to the reasonableness of rates charged or proposed to be charged by any public utility and with respect to the consistency of such rates with the public policy of assuring an energy supply adequate to protect the public health and safety and to promote the general welfare;
- (2) Review, investigate, and make appropriate recommendations to the Commission with respect to the service furnished, or proposed to be furnished by any public utility;
- (3) Intervene on behalf of the using and consuming public, in all Commission proceedings affecting the rates or service of any public utility;
- (4) When deemed necessary by the executive director in the interest of the using and consuming public, petition the Commission to initiate proceedings to review, investigate, and take appropriate action with respect to the rates or service of public utilities;
- (5) Intervene on behalf of the using and consuming public in all certificate applications filed pursuant to the provisions of G.S. 62-110.1, and

provide assistance to the Commission in making the analysis and plans required pursuant to the provisions of G.S. 62-110.1 and G.S. 62-155;

- (6) Intervene on behalf of the using and consuming public in all proceedings wherein any public utility proposes to reduce or abandon service to the public;
- (7) Investigate complaints affecting the using and consuming public generally which are directed to the Commission, members of the Commission, or the public staff and where appropriate make recommendations to the Commission with respect to such complaints;
- (8) Make studies and recommendations to the Commission with respect to standards, regulations, practices, or service of any public utility pursuant to the provisions of G.S. 62-43; provided, however, that the public staff shall have no duty, responsibility, or authority with respect to the enforcement of natural gas pipeline safety laws, rules, or regulations;
- (9) When deemed necessary by the executive director, in the interest of the using and consuming public, intervene in Commission proceedings with respect to transfers of franchises, mergers, consolidations, and combinations of public utilities pursuant to the provisions of G.S. 62-111;
- (10) Investigate and make appropriate recommendations to the Commission with respect to applications for certificates by radio common carriers, pursuant to the provisions of Article 6A of this Chapter;
- (11) Review, investigate, and make appropriate recommendations to the Commission with respect to contracts of public utilities with affiliates or subsidiaries, pursuant to the provisions of G.S. 62-153;
- (12) When deemed necessary by the executive director, in the interest of the using and consuming public, advise the Commission with respect to securities, regulations, and transactions, pursuant to the provisions of Article 8 of this Chapter.

(e) The public staff shall have no duty, responsibility, or authority with respect to the laws, rules or regulations pertaining to the physical facilities or equipment of common, contract and exempt carriers, the registration of vehicles or of insurance coverage of vehicles of common, contract and exempt carriers; the licensing, training, or qualifications of drivers or other persons employed by common, contract and exempt carriers, or the operation of motor vehicle equipment by common, contract and exempt carriers in the State.

(f) The executive director representing the public staff shall have the same rights of appeal from Commission orders or decisions as other parties to Commission proceedings.

(g) Upon request, the executive director shall employ the resources of the public staff to furnish to the Commission, its members, or the Attorney General, such information and reports or conduct such investigations and provide such other assistance as may reasonably be required in order to supervise and control the public utilities of the State as may be necessary to carry out the laws providing for their regulation.

(h) The executive director is authorized, on his own initiative or at the request of the Commission, to employ expert witnesses for participation in Commission proceedings, and the compensation and expenses therefor shall be paid from the Contingency and Emergency Fund.

(i) The executive director, within established budgetary limits, and as allowed by law, shall authorize and approve travel, subsistence, and related necessary expenses of the executive director or members of the public staff, incurred while traveling on official business. (1949, c. 1009, s. 3; 1963, c. 1165, s. 1; 1977, c. 468, s. 4.)

**Editor's Note. —**

The 1977 amendment, effective July 1, 1977, rewrote this section.

Session Laws 1977, c. 468, s. 23, provided that the provisions of this section as to the executive director and public staff should terminate Aug. 31, 1981, unless otherwise directed by the

General Assembly. Section 23 of the 1977 act was repealed by Session Laws 1979, c. 332, s. 1.

Session Laws 1977, c. 468, s. 21, contains a severability clause.

For a survey of 1977 law on common carriers, see 56 N.C.L. Rev. 853 (1978).

**§ 62-16: Repealed by Session Laws 1977, c. 468, s. 5, effective July 1, 1977.**

**Cross Reference. —** For provisions covering the subject matter of the repealed section, see § 62-15.

**Editor's Note. —** Session Laws 1977, c. 468, s. 21, contains a severability clause.

**§ 62-17. Annual reports; monthly or quarterly release of certain information; publication of procedural orders and decisions.**

(a1) The public staff of the Commission shall make and publish annual reports to the General Assembly on its activities in the interest of the using and consuming public.

(1977, c. 468, s. 6.)

**Editor's Note. —** The 1977 amendment, effective July 1, 1977, added subsection (a1).

Session Laws 1977, c. 468, s. 21, contains a severability clause.

As the rest of the section was not changed by the amendment, only subsection (a1) is set out.

**§ 62-19. Public record of proceedings; chief clerk; seal. —** (a) The Commission shall keep in the office of the chief clerk at all times a record of its official acts, rulings, orders, decisions, and transactions, and a current calendar of its scheduled activities and hearings, which shall be public records of the State of North Carolina.

(b) Upon receipt by the Commission, the chief clerk shall furnish to the executive director copies of all rates, tariffs, contracts, applications, petitions, pleadings, complaints, and all other documents filed with the Commission and shall furnish to the executive director copies of all orders and decisions entered by the Commission.

(1977, c. 468, s. 7.)

**Editor's Note. —** The 1977 amendment, effective July 1, 1977, substituted "the office of the chief clerk" for "its office" and "official acts, rulings, orders, decisions, and transactions, and a current calendar of its scheduled activities and hearings" for "official acts, rulings,

determinations and transactions" in subsection (a) and rewrote subsection (b).

Session Laws 1977, c. 468, s. 21, contains a severability clause.

As subsection (c) was not changed by the amendment, it is not set out.

**§ 62-20. Participation by Attorney General in Commission proceedings. —** The Attorney General may intervene, when he deems it to be advisable in the public interest, in proceedings before the Commission on behalf of the using and consuming public, including utility users generally and agencies of the State. The Attorney General may institute and originate proceedings before the Commission in the name of the State, its agencies or citizens, in matters within the jurisdiction of the Commission. The Attorney General may appear before such State and federal courts and agencies as he deems it advisable in matters affecting public utility services. In the performance of his responsibilities under this section, the Attorney General shall have the right to employ expert

witnesses, and the compensation and expenses therefor shall be paid from the Contingency and Emergency Fund. The Commission shall furnish the Attorney General with copies of all applications, petitions, pleadings, order and decisions filed with or entered by the Commission. The Attorney General shall have access to all books, papers, studies, reports and other documents filed with the Commission. (1949, c. 989, s. 1; c. 1029, s. 3; 1959, c. 400; 1963, c. 1165, s. 1; 1977, c. 468, s. 8.)

**Editor's Note.** —

The 1977 amendment, effective July 1, 1977, rewrote this section.

Session Laws 1977, c. 468, s. 21, contains a severability clause.

**§ 62-21:** Repealed by Session Laws 1977, c. 468, s. 9, effective July 1, 1977.

**Cross Reference.** —

For provisions covering the subject matter of the repealed section, see § 62-14.

**§ 62-23. Commission as an administrative board or agency.**

**The rate-making activities of the Commission are a legislative function.** State ex rel. Utilities Comm'n v. Edmisten, 294 N.C. 598, 242 S.E.2d 862 (1978).

**Rule-making is an exercise of the delegated legislative authority of the Commission,** under §§ 62-30 and 62-31, to supervise and control the public utilities of this State and to make reasonable rules and regulations to accomplish that end. State ex rel. Utilities Comm'n v. Edmisten, 294 N.C. 598, 242 S.E.2d 862 (1978).

**Administrative Actions not Res Judicata.** — Actions of an administrative agency which involve the exercise of a legislative rather than a judicial function are not res judicata. Exercises of the Commission's rule-making power, therefore, are not governed by the principles of res judicata and are reviewable by the Supreme Court in later appeals of closely related matters. State ex rel. Utilities Comm'n v. Edmisten, 294 N.C. 598, 242 S.E.2d 862 (1978).

### ARTICLE 3.

#### *Powers and Duties of Utilities Commission.*

**§ 62-30. General powers of Commission.**

**The rate-making activities of the Commission are a legislative function.** State ex rel. Utilities Comm'n v. Edmisten, 294 N.C. 598, 242 S.E.2d 862 (1978).

**Rule-making is an exercise of the delegated legislative authority of the Commission,** under this section and § 62-31, to supervise and control the public utilities of this State and to make reasonable rules and regulations to accomplish that end. State ex rel. Utilities Comm'n v. Edmisten, 294 N.C. 598, 242 S.E.2d 862 (1978).

**The Commission has no jurisdiction, etc. —**

In accord with original. See State ex rel. Utilities Comm'n v. National Merchandising Corp., 288 N.C. 715, 220 S.E.2d 304 (1975).

**Administrative Actions not Res Judicata.** — Actions of an administrative agency which involve the exercise of a legislative rather than a judicial function are not res judicata. Exercises of the Commission's rule-making power, therefore, are not governed by the principles of res judicata and are reviewable by the Supreme Court in later appeals of closely related matters. State ex rel. Utilities Comm'n v. Edmisten, 294 N.C. 598, 242 S.E.2d 862 (1978).

**Quoted in** State ex rel. Utilities Comm'n v. Simpson, 295 N.C. 519, 246 S.E.2d 753 (1978).

**Cited in** State ex rel. Utilities Comm'n v. Estes Express Lines, 33 N.C. App. 99, 234 S.E.2d 628 (1977).

**§ 62-31. Power to make and enforce rules and regulations for public utilities.**

The rate-making activities of the Commission are a legislative function. State ex rel. Utilities Comm'n v. Edmisten, 294 N.C. 598, 242 S.E.2d 862 (1978).

Rule-making is an exercise of the delegated legislative authority of the Commission, under § 62-30 and this section, to supervise and control the public utilities of this State and to make reasonable rules and regulations to accomplish that end. State ex rel. Utilities Comm'n v. Edmisten, 294 N.C. 598, 242 S.E.2d 862 (1978).

Authority to determine adequacy of public utility's service and rates to be charged therefor has been given to the Utilities Commission, not to the Supreme Court or the

Court of Appeals. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 24 N.C. App. 327, 210 S.E.2d 543 (1975).

**Administrative Action not Res Judicata.** — Actions of an administrative agency which involve the exercise of a legislative rather than a judicial function are not res judicata. Exercises of the Commission's rule-making power, therefore, are not governed by the principles of res judicata and are reviewable by the Supreme Court in later appeals of closely related matters. State ex rel. Utilities Comm'n v. Edmisten, 294 N.C. 598, 242 S.E.2d 862 (1978).

Applied in State ex rel. Utilities Comm'n v. National Merchandising Corp., 288 N.C. 715, 220 S.E.2d 304 (1975).

**§ 62-32. Supervisory powers; rates and service.**

**I. GENERAL CONSIDERATION.**

Authority to determine adequacy of public utility's service and rates to be charged therefor has been given to the Utilities Commission, not to the Supreme Court or to the Court of Appeals. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 24 N.C. App. 327, 210 S.E.2d 543 (1975), appeal dismissed, 289 N.C. 286, 221 S.E.2d 322 (1976).

**Duty of Commission to Regulate Service and Rates.** — Under this section and § 62-42, the Utilities Commission is given the power and the duty to compel utility companies to render adequate service and to set reasonable rates for such service. State ex rel. Utilities Comm'n v. Edmisten, 294 N.C. 598, 242 S.E.2d 862 (1978).

**Recovery of Reasonable Cost of Approved Gas Exploration Projects.** — The Commission, in ordering that the reasonable costs of

approved exploration projects were to be recoverable through tracking rate increases, acted within its acknowledged duty and authority to compel adequate and efficient utility service to the citizens of this State where it was clear from the Commission's findings that, without additional gas supplies, the gas utilities would be unable to render adequate service to their customers, that exploration programs were the most feasible means for obtaining these additional supplies, and that the utilities were unable, through traditional methods of financing, to fund sufficient exploration projects to obtain these supplies. State ex rel. Utilities Comm'n v. Edmisten, 294 N.C. 598, 242 S.E.2d 862 (1978).

Applied in State ex rel. Utilities Comm'n v. Edmisten, 26 N.C. App. 662, 217 S.E.2d 201 (1975).

**§ 62-34. To investigate companies under its control; visitation and inspection.**

(b) Members of the Commission, Commission staff, and public staff may during all reasonable hours enter upon any premises occupied by any public utility, for the purpose of making the examinations and tests and exercising any power provided for in this Article, and may set up and use on such premises any apparatus and appliances necessary therefor. Such public utility shall have the right to be represented at the making of such examinations, tests and inspections. (1899, c. 164, s. 1; Rev., s. 1064; 1913, c. 127, ss. 1, 2, 7; 1917, c. 194; C.S., s. 1060; 1933, c. 134, s. 8; c. 307, s. 14; 1941, c. 97; 1963, c. 1165, s. 1; 1977, c. 468, s. 10.)

**Editor's Note.** — The 1977 amendment, effective July 1, 1977, substituted "Members of the Commission, Commission staff, and public staff" for "The commissioners and the officers and employees of the Commission" at the beginning of subsection (b).

Session Laws 1977, c. 468, s. 23, provides: "Public staff provisions renewable after four years. (a) Unless the General Assembly shall otherwise direct, effective August 31, 1981, the provisions of G.S. 62-15 as set forth in sections 4 and 18 of this bill relating to the office of

executive director and the public staff in the Commission shall terminate, the office of executive director shall terminate, the positions assigned to the public staff shall be assigned to the Commission pursuant to pertinent provisions of Chapter 62 of the General Statutes, and the words 'public staff' as they appear in G.S. 62-34(b), G.S. 62-51, G.S. 62-70, and G.S. 62-327 shall be stricken from said sections of Chapter 62.

(b) No other provisions of this act shall be affected by the provisions of subsection (a) of

this section and the termination date provided in subsection (a) of this section shall apply only to those provisions of this act establishing the office of executive director and a public staff in the Commission and describing the duties and responsibilities of the executive director and the public staff."

Session Laws 1977, c. 468, s. 21, contains a severability clause.

As subsection (a) was not changed by the amendment, it is not set out.

### § 62-37. Investigations.

(b) If after such an investigation, or investigation and hearing, the Commission, in its discretion, is of the opinion that the public interest shall be served by an appraisal of any properties in question, the investigation of any particular construction, the audit of any accounts or books, the investigation of any contracts, or the practices, contracts or other relations between the public utility in question and any holding or finance agency with which such public utility may be affiliated, it shall be the duty of the Commission to report its findings and recommendation to the Governor and Council of State with request for an allotment from the Contingency and Emergency Fund to defray the expense thereof, which may be granted as provided by law for expenditures from such fund or may be denied. Provided, however, that the Commission is authorized to order any such appraisal, investigations, or audit to be undertaken by a competent, qualified, and independent firm selected by the Commission, the cost of such appraisal, investigation or audit to be borne by the public utility in question. Notwithstanding any other provisions of this Chapter, the Commission is authorized to initiate a full and complete management audit of any public utility company once every five years, by a competent, qualified, and independent firm, such audit to thoroughly examine the efficiency and effectiveness of management decisions among other factors as directed by the Commission. The cost of such audit is to be borne by the particular public utility subject to the audit; provided, however, that carriers subject to regulation by and auditing of the Interstate Commerce Commission shall not be required to bear the expense of additional audit of accounts or management audit required hereunder. (1931, c. 455; 1933, c. 134, s. 8; c. 307, s. 16; 1941, c. 97; 1963, c. 1165, s. 1; 1975, c. 867, s. 4.)

**Editor's Note.** — The 1975 amendment added the last three sentences in subsection (b).

As subsection (a) was not changed by the amendment, it is not set out.

### § 62-42. Compelling efficient service, extensions of services and facilities, additions and improvements.

#### Power and Duties of Commission. —

Under § 62-32 and this section, the Utilities Commission is given the power and the duty to compel utility companies to render adequate service and to set reasonable rates for such service. *State ex rel. Utilities Comm'n v. Edmisten*, 294 N.C. 598, 242 S.E.2d 862 (1978).

**Recovery of Reasonable Cost of Approved Gas Exploration Projects.** — The Commission, in ordering that the reasonable costs of approved exploration projects were to be

recoverable through tracking rate increases, acted within its acknowledged duty and authority to compel adequate and efficient utility service to the citizens of this State where it was clear from the Commission's findings that, without additional gas supplies, the gas utilities would be unable to render adequate service to their customers, that exploration programs were the most feasible means for obtaining these additional supplies, and that the utilities were unable, through traditional

methods of financing, to fund sufficient exploration projects to obtain these supplies. State ex rel. Utilities Comm'n v. Edmisten, 294 N.C. 598, 242 S.E.2d 862 (1978).

**§ 62-48. Appearance before courts and agencies.** — The Commission is authorized and empowered to initiate or appear in such proceedings before federal and State courts and agencies as in its opinion may be necessary to secure for the users of public utility service in this State just and reasonable rates and service; provided, however, that the Commission shall not appear in any State appellate court in support of any order or decision of the Commission entered in a proceeding in which a public utility had the burden of proof. (1899, c. 164, s. 14; Rev., s. 1110; 1907, c. 469, s. 5; C. S., s. 1075; 1929, c. 235; 1933, c. 134, s. 8; 1941, c. 97; 1963, c. 1165, s. 1; 1977, c. 468, s. 11.)

**Editor's Note.** — The 1977 amendment, effective July 1, 1977, added the proviso to the end of the section. Session Laws 1977, c. 468, s. 21, contains a severability clause.

**§ 62-50. Safety standards for gas pipeline facilities.** — (a) The Commission may promulgate and adopt safety standards for the operation of natural gas pipeline facilities in North Carolina. These safety standards shall apply to the pipeline facilities of gas utilities and pipeline carriers under franchise from the Utilities Commission and to pipeline facilities of other gas operators, as defined in subsection (g) of this section. The Commission shall require that all gas operators file with the Commission reports of all accidents occurring in connection with the operation of their gas pipeline facilities located in North Carolina. The Commission may require that all gas operators file with the Commission copies of their construction, operation, and maintenance standards and procedures, and any amendments thereto, and such other information as may be necessary to show compliance with the safety standards promulgated by the Commission. Where the Commission has reason to believe that any gas operator is not in compliance with the Commission's safety standards, the Commission may, after notice and hearing, order that gas operator to take such measures as may be necessary to comply with the standards. The Commission may require all gas operators to furnish engineering reports showing that their pipeline facilities are in safe operating condition and are being operated in conformity with the Commission's safety standards.

(g) For the purpose of this section, "gas operators" include gas utilities and gas pipeline carriers operating under a franchise from the Utilities Commission, municipal corporations operating municipally owned gas distribution systems, and public housing authorities and any person operating apartment complexes or mobile home parks that distribute or submeter natural gas to their tenants. This section does not confer any other jurisdiction over municipally owned gas distribution systems, public housing authorities or persons operating apartment complexes or mobile home parks. (1967, c. 1134, s. 1; 1969, c. 646; 1971, cc. 549, 1145; 1979, c. 269, s. 1.)

**Editor's Note.** — The 1979 amendment, effective July 1, 1979, rewrote subsections (a) and (g).

As only subsections (a) and (g) were changed by the amendment, the rest of the section is not set out.

**§ 62-51. To inspect books and records of corporations affiliated with public utilities.** — Members of the Commission, Commission staff, and public staff are hereby authorized to inspect the books and records of corporations affiliated with public utilities regulated by the Utilities Commission under the provisions of this Chapter, including parent corporations and subsidiaries of

parent corporations. This authorization shall extend to all reasonably necessary inspection of all books and records of account and agreements and transactions between public utilities doing business in North Carolina and their affiliated corporations where such records relate either directly or indirectly to the provision of intrastate service by the utility. The right to inspect such books and records shall apply both to books and records in the State of North Carolina and such books and records located outside of the State of North Carolina. If any such affiliated corporation shall refuse to permit such inspection of its books and records and its transactions with public utilities doing business in North Carolina, the Utilities Commission is empowered to order the public utility regulated in North Carolina to show cause why it should not secure from its affiliated corporation such books and records for inspection in North Carolina or why their franchise to operate as a public utility in North Carolina should not be cancelled. (1969, c. 764, s. 1; 1977, c. 468, s. 12.)

**Editor's Note.** — The 1977 amendment, effective July 1, 1977, substituted "Members of the Commission, Commission staff, and public staff" for "The Utilities Commission and its employees" at the beginning of the section.

Session Laws 1977, c. 468, s. 23, provides: "Public staff provisions renewable after four years. (a) Unless the General Assembly shall otherwise direct, effective August 31, 1981, the provisions of G.S. 62-15 as set forth in sections 4 and 18 of this bill relating to the office of executive director and the public staff in the Commission shall terminate, the office of executive director shall terminate, the positions assigned to the public staff shall be assigned to the Commission pursuant to pertinent provisions

of Chapter 62 of the General Statutes, and the words 'public staff' as they appear in G.S. 62-34(b), G.S. 62-51, G.S. 62-70, and G.S. 62-327 shall be stricken from said sections of Chapter 62.

(b) No other provisions of this act shall be affected by the provisions of subsection (a) of this section and the termination date provided in subsection (a) of this section shall apply only to those provisions of this act establishing the office of executive director and a public staff in the Commission and describing the duties and responsibilities of the executive director and the public staff."

Session Laws 1977, c. 468, s. 21, contains a severability clause.

## ARTICLE 4.

### *Procedure before the Commission.*

#### **§ 62-60. Commission acting in judicial capacity; administering oaths and hearing evidence; decisions; quorum.**

**Rate-Making Is a Legislative Function.** — The rate-making activities of the Commission are a legislative function. *State ex rel. Utilities Comm'n v. Edmisten*, 294 N.C. 598, 242 S.E.2d 862 (1978).

**Rule-Making Is a Legislative Function.** — Rule-making is an exercise of the delegated legislative authority of the Commission, under §§ 62-30 and 62-31, to supervise and control the public utilities of this State and to make reasonable rules and regulations to accomplish that end. *State ex rel. Utilities Comm'n v.*

*Edmisten*, 294 N.C. 598, 242 S.E.2d 862 (1978).

#### **Res Judicata.** —

Actions of an administrative agency which involve the exercise of a legislative rather than a judicial function are not res judicata. Exercises of the Commission's rule-making power, therefore, are not governed by the principles of res judicata and are reviewable by the Supreme Court in later appeals of closely related matters. *State ex rel. Utilities Comm'n v. Edmisten*, 294 N.C. 598, 242 S.E.2d 862 (1978).

**§ 62-60.1. Commission to sit in panels of three.** — (a) The Utilities Commission shall sit in panels of three commissioners each unless the chairman by order shall set the proceeding for hearing by the full Commission.

(b) Any order or decision made unanimously by a panel of three commissioners shall constitute the order or decision of the Commission, except

as otherwise provided in this Chapter; provided, however, that upon motion of any three commissioners not sitting on the panel, made within 10 days of issuance of such order or decision of the panel, with notice to parties of record, the order or decision of the panel shall thereby be stayed and the full Commission shall review the order or decision of the panel and shall within 30 days of said motion either affirm or modify the order or decision of the panel or remand the matter to the panel for further proceedings; provided that the foregoing shall not limit the right of parties to seek review of such order or decision under G.S. 62-90.

(c) In the event an order or decision of the panel of three is not made unanimously, such order or decision shall be a recommended order only, subject to review by the full Commission, with all commissioners eligible to participate in the final arguments and decision. Review shall take place in accordance with the provisions of G.S. 62-78 and the Commission shall decide the matter in controversy and make appropriate order or decision thereon within 60 days of the date of the recommended order. If within the filing period specified by the panel no exception has been filed by a party, or if the Commission within the same period has not advised the parties that it will conduct a review upon its own motion, the recommended order or decision shall become the final order or decision of the Commission. Nothing in this section shall amend or repeal the provisions of G.S. 62-134.

(d) This section shall become effective July 1, 1975, and shall not affect the utilization of or the procedures outlined for utilization of a hearing commissioner or a hearing examiner as provided for elsewhere in Chapter 62. (1975, c. 243, s. 4; 1977, c. 468, s. 13.)

**Editor's Note.** — The 1977 amendment, effective July 1, 1977, deleted the former second and third sentences of subsection (a), which read, respectively, "The chairman of the Commission insofar as practicable shall assign the members to panels in such fashion that each member sits a substantially equal number of times with each other member and that each

member sits a substantially equal number of times on different types of proceedings" and "The chairman shall designate the presiding commissioner of all panels in a rotating manner."

Session Laws 1977, c. 468, s. 21, contains a severability clause.

## § 62-65. Rules of evidence; judicial notice.

**Judicial Notice.** — Although the record before the Commission did not include testimony or documentary evidence as to the earnings of the 24 electric utilities whose earnings are shown in Moody's Investment Service, subsection (b) expressly authorizes the Commission to take judicial notice of data

published by reputable financial reporting services so that there was no error in the consideration of this data by the Commission in determining a fair rate of return to be allowed the utility. *State ex rel. Utilities Comm'n v. Edmisten*, 291 N.C. 575, 232 S.E.2d 177 (1977).

**§ 62-70. Ex parte communications.** — (a) In all matters and proceedings pending on the Commission's formal docket, with adversary parties of record, all communications or contact of any nature whatsoever between any party and the Commission or any of its members, or any hearing examiner assigned to such docket, whether verbal or written, formal or informal, which pertains to the merits of such matter or proceeding, shall be made only with full knowledge of, or notice to, all other parties of record. All parties shall have an opportunity to be informed fully as to the nature of such communication and to be present and heard with respect thereto. In all matters and proceedings which are judicial in nature, it is the specific intent of this section that all members of the Commission shall conduct all trials, hearings and proceedings before them in the manner and

in accordance with the judicial standards applicable to judges of the General Court of Justice, as provided in Chapter 7A of the General Statutes, and upon the initiation of any such proceedings, and particularly during the trial or hearing thereof, there shall be no communications or contacts of any nature, including telephone communications, written correspondence, or direct office conferences, between any party or such party's attorney and any member of the Commission or any hearing examiner, without all other parties to such proceeding having full notice and opportunity to be present and heard with respect to any such contact or communication.

Any commissioner who knowingly receives any such communication or contact during such proceeding and who fails promptly to report the same to the Attorney General, or who otherwise violates any of the provisions of this subsection shall be liable to impeachment. Any examiner who knowingly receives any such communication or contact during such proceeding and who fails promptly to report the same to the Attorney General or who otherwise violates any of the provisions of this subsection shall be subject to dismissal from employment for cause.

(g) Notwithstanding the foregoing, no communication by a public utility or by the public staff regarding the level of rates specifically proposed to be charged by a public utility shall be made or directed to the Commission, a member of the Commission, or hearing examiner, except in the form of written tariff, petition, application, pleading, written response, written recommendation, recorded conference, intervention, answer, pleading, sworn testimony and related exhibits, oral argument on the record, or brief. Willful violations of the provisions of this section on the part of any public utility shall subject such public utility to the penalties provided in G.S. 62-310(a). Willful violations of the provisions of this section by a member of the public staff shall subject such person to dismissal for cause. (1963, c. 1165, s. 1; 1977, c. 468, s. 14; 1979, c. 332, s. 2.)

**Editor's Note.** — The 1977 amendment, effective July 1, 1977, in the first paragraph of subsection (a), inserted "pending" and "whatsoever" in the first sentence, substituted "contact" for "contacts" and "pertains" for "pertain" in the first sentence, and added the third sentence. The amendment also added the second paragraph of subsection (a) and added subsection (g).

The 1979 amendment substituted "regarding the level of rates specifically proposed to be charged" for "with regard to matters affecting the rates charged or proposed to be charged" near the beginning of the first sentence of subsection (g).

Session Laws 1977, c. 468, s. 23, provides: "Public staff provisions renewable after four years. (a) Unless the General Assembly shall otherwise direct, effective August 31, 1981, the provisions of G.S. 62-15 as set forth in sections 4 and 18 of this bill relating to the office of executive director and the public staff in the Commission shall terminate, the office of

executive director shall terminate, the positions assigned to the public staff shall be assigned to the Commission pursuant to pertinent provisions of Chapter 62 of the General Statutes, and the words 'public staff' as they appear in G.S. 62-34(b), G.S. 62-51, G.S. 62-70, and G.S. 62-327 shall be stricken from said sections of Chapter 62.

(b) No other provisions of this act shall be affected by the provisions of subsection (a) of this section and the termination date provided in subsection (a) of this section shall apply only to those provisions of this act establishing the office of executive director and a public staff in the Commission and describing the duties and responsibilities of the executive director and the public staff."

Session Laws 1977, c. 468, s. 21, contains a severability clause.

As the rest of the section was not changed by the amendment, only subsections (a) and (g) are set out.

**§ 62-71. Hearings to be public; record of proceedings.** — (a) All formal hearings before the Commission, a panel of three commissioners, a commissioner or an examiner shall be public, and shall be conducted in accordance with such rules as the Commission may prescribe. A full and

complete record shall be kept of all proceedings on any formal hearing, and all testimony shall be taken by a reporter appointed by the Commission. Any party to a proceeding shall be entitled to a copy of the record or any part thereof upon the payment of the reasonable cost thereof as determined by the Commission.

(1975, c. 243, s. 9.)

**Editor's Note.** — The 1975 amendment substituted "panel of three commissioners" for "hearing division" near the beginning of the first sentence of subsection (a).

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

### § 62-73. Complaints against public utilities.

**In a complaint case the field of inquiry is limited to the comparatively narrow question of fair treatment to a group or to a class.** State ex rel. Utilities Comm'n v. County of Harnett, 30 N.C. App. 24, 226 S.E.2d 515 (1976).

**Standing of Manufacturer and Distributor of Plastic Telephone Directory Covers to Complain and Appeal.** — See State ex rel. Utilities Comm'n v. National Merchandising Corp., 288 N.C. 715, 220 S.E.2d 304 (1975).

### § 62-75. Burden of proof.

**The burden of proof is upon the utility seeking a rate increase to show the proposed rates are just and reasonable.** State ex rel.

Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 24 N.C. App. 327, 210 S.E.2d 543 (1975), appeal dismissed, 289 N.C. 286, 221 S.E.2d 322 (1976).

**§ 62-76. Hearings by Commission, panel of three commissioners, single commissioner, or examiner.** — (a) Except as otherwise provided in this Chapter, any matter requiring a hearing shall be heard and decided by the Commission or shall be referred to a panel of three commissioners or one of the commissioners or a qualified member of the Commission staff as examiner for hearing, report and recommendation of an appropriate order or decision thereon. Subject to the limitations prescribed in this Article, a panel of three commissioners, hearing commissioner or examiner to whom a hearing has been referred by order of the chairman shall have all the rights, duties, powers and jurisdiction conferred by this Chapter upon the Commission. The chairman, in his discretion, may direct any hearing by the Commission or any panel, commissioner or examiner to be held in such place or places within the State as he may determine to be in the public interest and as will best serve the convenience of interested parties. Before any member of the Commission staff enters upon the performance of duties as an examiner, he shall first take, subscribe to and file with the Commission an oath similar to the oath required of members of the Commission.

(b) Repealed by Session Laws 1975, c. 243, s. 5.  
(1975, c. 243, ss. 5, 9, 10.)

**Editor's Note.** — The 1975 amendment substituted "panel of three commissioners" for "division of the Commission" in the first sentence, and for "hearing division" in the second sentence, and "panel" for "division" in

the third sentence, of subsection (a) and repealed subsection (b), which formerly provided for hearings by a division of the Commission.

As subsection (c) was not changed by the amendment, it is not set out.

**§ 62-77. Recommended decision of panel of three commissioners, single commissioner or examiner.** — Any report, order or decision made or recommended by a panel of three commissioners, commissioner or examiner with respect to any matter referred for hearing shall be in writing and shall set

forth separately findings of fact and conclusions of law and shall be filed with the Commission. A copy of such recommended order, report and findings shall be served upon the parties who have appeared in the proceeding. (1949, c. 989, s. 1; 1963, c. 1165, s. 1; 1975, c. 243, s. 9.)

**Editor's Note.** — The 1975 amendment substituted "panel of three commissioners" for "hearing division" near the beginning of the first sentence.

**§ 62-78. Proposed findings, briefs, exceptions, orders, expediting cases, and other procedure.** — (a) Prior to each decision or order by the Commission in a proceeding initially heard by it and prior to any recommended decision or order of a panel of three commissioners, commissioner or examiner, the parties shall be afforded an opportunity to submit, within the time prescribed by order entered in the cause, unless further extended by order of the Commission, for the consideration of the Commission, panel, commissioner or examiner, as the case may be, proposed findings of fact and conclusions of law and briefs or, in its discretion, oral arguments in lieu thereof.

(b) Within the time prescribed by the panel of three commissioners, commissioner, or examiner, the parties shall be afforded an opportunity to file exceptions to the recommended decision or order and a brief in support thereof, provided the time so fixed shall be not less than 15 days from the date of such recommended decision or order. The record shall show the ruling upon each requested finding and conclusion or exception.

(c) In all proceedings in which a panel of three commissioners, commissioner or examiner has filed a report, recommended decision or order to which exceptions have been filed, the Commission, before making its final decision or order, shall afford the party or parties an opportunity for oral argument. When no exceptions are filed within the time specified to a recommended decision or order, such recommended decision or order shall become the order of the Commission and shall immediately become effective unless the order is stayed or postponed by the Commission; provided, the Commission may, on its own motion, review any such matter and take action thereon as if exceptions thereto had been filed.

(1975, c. 243, ss. 9, 10; c. 867, s. 5.)

**Editor's Note.** — The first 1975 amendment substituted "panel of three commissioners" for "hearing division" in subsections (a), (b) and (c) and "panel" for "division" in subsection (a).

The second 1975 amendment added "or, in its discretion, oral arguments in lieu thereof" at the end of subsection (a).

As the rest of the section was not changed by the amendments, only subsections (a), (b) and (c) are set out.

### § 62-79. Final orders and decisions; findings; service; compliance.

#### Determination of "Fair Value". —

In adopting a rate of return of 7.55% for a telephone company, where the Commission devoted some 18 pages to reviewing and analyzing testimony and pertinent statutes and court decisions relating to its finding of fair value, the Commission did not err in failing to make factual findings as to the cost of capital to the telephone company and the cost of, or a

reasonable return on, either book or fair value equity to the company. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 24 N.C. App. 327, 210 S.E.2d 543 (1975), appeal dismissed, 289 N.C. 286, 221 S.E.2d 322 (1976).

**Applied** in State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 575, 232 S.E.2d 177 (1977).

**§ 62-80. Powers of Commission to rescind, alter or amend prior order or decision.**

This section does not require a motion by the public utility, or other party, as a condition precedent to the authority of the Utilities Commission to amend a previously issued order. State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 575, 232 S.E.2d 177 (1977).

**Reconsideration until Order Is Final.** — At least until an order becomes final by expiration of the time allowed for appeal, this section authorizes the Commission, upon its own motion or upon the motion of any party, to reconsider a previously issued order, upon proper notice and hearing, upon the record already compiled, without requiring the institution of a new and independent proceeding by complaint or

otherwise. State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 575, 232 S.E.2d 177 (1977).

**Modification, etc., Based on Prior Misapprehension of Facts.** — This section is broad enough to permit the Commission to modify and amend its order, even substantially, for the reason that, upon further consideration of the record before it, the Commission comes to the opinion that its order was due to the Commission's misapprehension of the facts, or disregard of facts, shown by the evidence received at the original hearing. State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 575, 232 S.E.2d 177 (1977).

**§ 62-81. Special procedure in hearing and deciding rate cases.** — (a) All cases or proceedings, declared to be or properly classified as general rate cases under G.S. 62-137, or any proceedings which will substantially affect any utility's overall level of earnings or rate of return, shall be set for trial or hearing by the Commission, which trial or hearing shall be set to commence within six months of the institution or filing thereof, and all such cases or proceedings shall be tried or heard and decided, with the issuance of a final order, by the Commission within nine months of the institution or filing thereof. All such cases or proceedings shall be tried or heard and decided in accordance with the rate-making procedure set forth in G.S. 62-133 and such cases shall be given priority over all other cases or proceedings pending before the Commission. In all such cases the Commission shall make a transcript of the evidence and testimony presented and received by it and shall furnish a copy thereof to any party so requesting by the third business day after the taking of such evidence and testimony.

(b) Any public utility filing or applying for an increase in rates for electric, telephone, natural gas or water service shall notify its customers proposed to be affected by such increase of such filing by regular mail or by newspaper publications, as directed by the Commission, within 30 days of such filing, which notice shall state that the Commission shall set and shall conduct a trial or hearing with respect to such filing or application within six months of said filing date. All other public utilities shall give such notice in such manner as shall be prescribed by the Commission.

(c) In cases or proceedings filed with and pending before the Commission, where the total annual revenue requested, or where the total annual revenue increase requested, is less than one hundred thousand dollars (\$100,000), even though all or a substantial portion of the rate structure is being initially established or is under review, the chairman of the Commission may refer the proceeding to a panel of three commissioners or to a hearing commissioner or to a hearing examiner for hearing.

(d) In all proceedings for an increase in rates and all other proceedings declared to be general rate cases under G.S. 62-137, the Commission shall conduct the hearing or portions of the hearing within the area of the State served by the public utility whose rates are under consideration, provided this subsection shall not apply to proceedings held pursuant to G.S. 62-134(e) and 62-133(f).

(e) Notwithstanding the provisions of this section, application by any public utility for permission and authority to adjust its rates and charges based solely

upon the cost of fuel used in the generation or production of electric power shall be determined in accordance with the provisions of G.S. 62-134(e). (1963, c. 1165, s. 1; 1973, c. 1074; 1975, c. 45; c. 243, ss. 6, 9; c. 867, s. 6; 1977, c. 468, s. 15.)

**Editor's Note.—**

The first 1975 amendment made changes in the former first sentence of subsection (a), deleted former subsection (b), which provided for the referral by the chairman of the Commission of certain rate hearings to a division of the Commission, a hearing commissioner or a hearing examiner.

The second 1975 amendment designated as subsection (a) the section as amended by the first 1975 amendment, made a change in the former second sentence of that subsection, and added present subsection (c).

The third 1975 amendment made changes in the former third sentence in subsection (a).

The 1977 amendment, effective July 1, 1977, rewrote subsection (a), added present subsection

(b), substituted "In cases or proceedings filed with and pending before the Commission" for "In matters," "one hundred thousand dollars (\$100,000)" for "fifty thousand dollars (\$50,000)," and "proceeding" for "matter" in present subsection (c), which was formerly subsection (b), and added subsections (d) and (e).

Session Laws 1977, c. 468, s. 21, contains a severability clause.

Cited in State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 327, 230 S.E.2d 651 (1976); State ex rel. Utilities Comm'n v. Edmisten, 294 N.C. 598, 242 S.E.2d 862 (1978).

**§ 62-82. Special procedure on application for certificate for generating facility; appeal from award order.** — (a) Notice of Application for Certificate for Generating Facility; Hearing; Briefs and Oral Arguments. — Whenever there is filed with the Commission an application for a certificate of public convenience and necessity for the construction of a facility for the generation of electricity under G.S. 62-110.1, the Commission shall require the applicant to publish a notice thereof once a week for four successive weeks in a daily newspaper of general circulation in the county where such facility is proposed to be constructed and thereafter the Commission upon complaint shall, or upon its own initiative may, upon reasonable notice, enter upon a hearing to determine whether such certificate shall be awarded. Any such hearing must be commenced by the Commission not later than three months after the filing of such application, and the procedure for rendering decisions therein shall be given priority over all other cases on the Commission's calendar of hearings and decisions, except rate proceedings referred to in G.S. 62-81. Such applications shall be heard as provided in G.S. 62-60.1, and the Commission shall furnish a transcript of evidence and testimony submitted by the end of the second business day after the taking of each day of testimony. The Commission or panel shall require that briefs and oral arguments in such cases be submitted within 30 days after the conclusion of the hearing, and the Commission or panel shall render its decision in such cases within 60 days after submission of such briefs and arguments. If the Commission or panel does not, upon its own initiative, order a hearing and does not receive a complaint within 10 days after the last day of publication of the notice, the Commission or panel shall enter an order awarding the certificate.

(1975, c. 243, s. 7.)

**Editor's Note.** — The 1975 amendment substituted "as provided in G.S. 62-60.1" for "by the full Commission" near the beginning of the third sentence of subsection (a) and inserted "or panel" following "Commission" in four places in

the fourth and fifth sentences of that subsection.

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

## ARTICLE 5.

*Review and Enforcement of Orders.***§ 62-90. Right of appeal; filing of exceptions.**

- (d) The appeal shall lie to the Court of Appeals as provided in G.S. 7A-29. The procedure for the appeal shall be as provided by the rules of appellate procedure.  
 (e), (f) Repealed by Session Laws 1975, c. 391, s. 12, effective July 1, 1975.  
 (1975, c. 391, s. 12.)

**I. GENERAL CONSIDERATION.**

**Editor's Note.** — The 1975 amendment substituted the present second sentence of subsection (d) for former provisions outlining the procedure for taking an appeal and repealed subsections (e) and (f), which also related to procedure on appeal.

Session Laws 1975, c. 391, s. 16, provides: "This act shall be in effect on and after July 1, 1975, in respect of all appeals from the courts of the trial divisions, the Utilities Commission, the Industrial Commission, and the Commissioner of Insurance to the courts of the appellate division which shall be taken on and after the effective date. This act shall not apply to appeals taken prior to its effective date."

As the other subsections were not changed by the amendment, they are not set out.

**Section 62-137 Inapplicable to Proceedings under Subsection (c) of This Section.** —

**§ 62-91. Appeal docketed; title on appeal; priorities on appeal.** — Unless otherwise provided by the rules of appellate procedure, the cause on appeal from the Utilities Commission shall be entitled "State of North Carolina ex rel. Utilities Commission (here add any additional parties in support of the Commission Order and their capacity before the Commission), Appellee(s) v. (here insert name of appellant and his capacity before the Commission), Appellant." Appeals from the Utilities Commission pending in the superior courts on September 30, 1967, shall remain on the civil issue docket of such superior court and shall have priority over other civil actions. Appeals to the Court of Appeals under G.S. 7A-29 shall be docketed in accordance with the rules of appellate procedure. (1949, c. 989, s. 1; 1963, c. 1165, s. 1; 1967, c. 1190, s. 6; 1975, c. 391, s. 13.)

**Editor's Note.** — The 1975 amendment substituted "rules of appellate procedure" for "rules of the Court of Appeals" in the first and last sentences. A literal compliance with the language of the 1975 amendatory act would have required "appellate procedure" to be substituted for "the Court of Appeals" near the beginning of the last sentence of this section as well as at the end of that sentence; however, the codifiers have not followed the act literally, but have given it effect according to its obvious intent.

Section 62-137 is inapplicable to proceedings conducted under subsection (c) of this section, since their scope is limited by statute to the exceptions on which the particular appeal of a final order or decision is based, leaving the Commission without authority to declare the hearings a general rate case or complaint proceeding. The Commission may consider only the grounds upon which the applicant asserts that the Commission's order or decision is unlawful, unjust, unreasonable or unwarranted, including alleged errors committed by the Commission. State ex rel. Utilities Comm'n v. Edmisten, 294 N.C. 598, 242 S.E.2d 862 (1978).

**Applied** in State ex rel. Utilities Comm'n v. Edmisten, 29 N.C. App. 258, 224 S.E.2d 219 (1976).

**Cited** in State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 289 N.C. 286, 221 S.E.2d 322 (1976).

**Session Laws 1975, c. 391, s. 16.** — Provides: "This act shall be in effect on and after July 1, 1975, in respect of all appeals from the courts of the trial divisions, the Utilities Commission, the Industrial Commission, and the Commissioner of Insurance to the courts of the appellate division which shall be taken on and after the effective date. This act shall not apply to appeals taken prior to its effective date."

**§ 62-92. Parties on appeal.**

**Standing of Manufacturer and Distributor of Plastic Telephone Directory Covers to Complain and Appeal.** — See State ex rel.

Utilities Comm'n v. National Merchandising Corp., 288 N.C. 715, 220 S.E.2d 304 (1975).

**S 62-94. Record on appeal; extent of review.** — (a) On appeal the court shall review the record and the exceptions and assignments of error in accordance with the rules of appellate procedure, and any alleged irregularities in procedures before the Commission, not shown in the record, shall be considered under the rules of appellate procedure.

(1975, c. 391, s. 14.)

**I. GENERAL CONSIDERATION.****Editor's Note.** —

The 1975 amendment substituted "appellate procedure" for "the Court of Appeals" in two places in subsection (a).

Session Laws 1975, c. 391, s. 16, provides: "This act shall be in effect on and after July 1, 1975, in respect of all appeals from the courts of the trial divisions, the Utilities Commission, the Industrial Commission, and the Commissioner of Insurance to the courts of the appellate division which shall be taken on and after the effective date. This act shall not apply to appeals taken prior to its effective date."

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

**Attorney General Not Prejudiced by Failure to Hold Hearing.** — The Attorney General was not prejudiced by the action of the Commission in allowing an exploration tracking rate increase to go into effect without a hearing since a refund could be sought under this section. State ex rel. Utilities Comm'n v. Edmisten, 294 N.C. 598, 242 S.E.2d 862 (1978).

**Weighing of Evidence, etc.** —

The credibility of the testimony was for the determination of the Commission. State ex rel. Utilities Comm'n v. General Tel. Co. of Southeast, 285 N.C. 671, 208 S.E.2d 681 (1974).

**Subsection (b) States Authority of Court.** —

The decision of the Commission with regard to rates for public utilities will be upheld by the Court of Appeals on appeal unless it is assailable on one of the grounds enumerated in subsection (b) of this section. State ex rel. Utilities Comm'n v. Mebane Home Tel. Co., 35 N.C. App. 588, 242 S.E.2d 165 (1978).

The credibility of the evidence and the weight to be given it was for the determination of the Commission. State ex rel. Utilities Comm'n v. Farmers Chem. Ass'n, 33 N.C. App. 433, 235 S.E.2d 398, cert. denied, 293 N.C. 258, 237 S.E.2d 539 (1977).

**And Court May Not Find Facts, etc.** —

A finding of fact or determination of what rates are reasonable by the Utilities Commission may not be reversed or modified by the

reviewing court merely because the court would have reached a different finding or determination upon the evidence. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 24 N.C. App. 327, 210 S.E.2d 543 (1975), appeal dismissed, 289 N.C. 286, 221 S.E.2d 322 (1976).

**Commission's Findings Are Conclusive, etc.** —

Upon appeal, the rates fixed by the Utilities Commission, pursuant to this Chapter, are deemed *prima facie* just and reasonable, and all findings of fact supported by competent, material and substantial evidence are conclusive. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 24 N.C. App. 327, 210 S.E.2d 543 (1975), appeal dismissed, 289 N.C. 286, 221 S.E.2d 322 (1976).

When the Commission's findings are supported by competent, material and substantial evidence, they are binding upon the appellate court. State ex rel. Utilities Comm'n v. Farmers Chem. Ass'n, 33 N.C. App. 433, 235 S.E.2d 398, cert. denied, 293 N.C. 258, 237 S.E.2d 539 (1977).

**When the record, considered as a whole, contains substantial evidence supporting the subjective judgment of the Commission on any of the factors in the fixing of reasonable rates under § 62-133, the conclusion reached by the Commission may not be disturbed by a reviewing court merely because the court's subjective judgment is different from that of the Commission, nor is the Commission required to accept as conclusive the subjective judgment of a witness, even though the record contains no expression of a contrary opinion by another witness.** State ex rel. Utilities Comm'n v. Edmisten, 29 N.C. App. 428, 225 S.E.2d 101, aff'd, 291 N.C. 424, 230 S.E.2d 647 (1976).

**And due account shall be taken of the rule of prejudicial error, etc.** —

Subsection (c) requires the reviewing court to take due note of the rule of prejudicial error. State ex rel. Utilities Comm'n v. General Tel. Co. of Southeast, 285 N.C. 671, 208 S.E.2d 681 (1974).

**The authority of an appellate court to reverse or modify an order** of the Utilities Commission, or to remand the matter to the Commission for further proceedings, is limited to that specified in this section, which includes the authority to reverse or modify such order on the ground that it violates a constitutional provision. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 24 N.C. App. 327, 210 S.E.2d 543 (1975), appeal dismissed, 289 N.C. 286, 221 S.E.2d 322 (1976); State ex rel. Utilities

Comm'n v. Farmers Chem. Ass'n, 33 N.C. App. 433, 235 S.E.2d 398, cert. denied, 293 N.C. 258, 237 S.E.2d 539 (1977).

**Applied** in State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 575, 232 S.E.2d 177 (1977); In re Duke Power Co., 37 N.C. App. 188, 245 S.E.2d 787 (1978).

**Cited** in State ex rel. Utilities Comm'n v. Public Serv. Co. of N.C., Inc., 35 N.C. App. 156, 241 S.E.2d 79 (1978); In re Rogers, 297 N.C. 48, 253 S.E.2d 912 (1979).

### § 62-96. Appeal to Supreme Court.

**Standing of Manufacturer and Distributor of Plastic Telephone Directory Covers to Complain and Appeal.** — See State ex rel.

Utilities Comm'n v. National Merchandising Corp., 288 N.C. 715, 220 S.E.2d 304 (1975).

## ARTICLE 6.

### *The Utility Franchise.*

### § 62-110. Certificate of convenience and necessity.

#### **By this section the State, etc. —**

This State has adopted the policy of granting to a telephone company a monopoly upon the rendering of telephone service within its service area. State ex rel. Utilities Comm'n v. National Merchandising Corp., 288 N.C. 715, 220 S.E.2d 304 (1975).

#### **Certificate Is Not Required, etc. —**

In accord with original. See State ex rel. Utilities Comm'n v. Edmisten, 40 N.C. App. 109, 252 S.E.2d 516 (1979).

**Nothing in this Chapter confers upon a telephone company a monopoly upon**

**advertising by its business subscribers.** State ex rel. Utilities Comm'n v. National Merchandising Corp., 288 N.C. 715, 220 S.E.2d 304 (1975).

**The power of eminent domain is inherent in the certificate of public convenience and necessity.** State ex rel. Utilities Comm'n v. Edmisten, 40 N.C. App. 109, 252 S.E.2d 516 (1979).

**Applied** in State ex rel. Utilities Comm'n v. General Tel. Co. of Southeast, 285 N.C. 671, 208 S.E.2d 681 (1974).

### § 62-110.1. Certificate for construction of generating facility; analysis of long-range needs for expansion of facilities.

(c) The Commission shall develop, publicize, and keep current an analysis of the long-range needs for expansion of facilities for the generation of electricity in North Carolina, including its estimate of the probable future growth of the use of electricity, the probable needed generating reserves, the extent, size, mix and general location of generating plants and arrangements for pooling power to the extent not regulated by the Federal Power Commission and other arrangements with other utilities and energy suppliers to achieve maximum efficiencies for the benefit of the people of North Carolina, and shall consider such analysis in acting upon any petition by any utility for construction. In developing such analysis, the Commission shall confer and consult with the public utilities in North Carolina, the utilities commissions or comparable agencies of neighboring states, the Federal Power Commission, the Southern Growth Policies Board, and other agencies having relevant information and may participate as it deems useful in any joint boards investigating generating plant sites or the probable need for future generating facilities. In addition to such reports as public utilities may be required by statute or rule of the Commission to file with the Commission, any such utility in North Carolina may submit to

the Commission its proposals as to the future needs for electricity to serve the people of the State or the area served by such utility, and insofar as practicable, each such utility and the Attorney General may attend or be represented at any formal conference conducted by the Commission in developing a plan for the future requirements of electricity for North Carolina or this region. In the course of making the analysis and developing the plan, the Commission shall conduct one or more public hearings. Each year, the Commission shall submit to the Governor and to the appropriate committees of the General Assembly a report of its analysis and plan, the progress to date in carrying out such plan, and the program of the Commission for the ensuing year in connection with such plan.

(d) In acting upon any petition for the construction of any facility for the generation of electricity, the Commission shall take into account the applicant's arrangements with other electric utilities for interchange of power, pooling of plant, purchase of power and other methods for providing reliable, efficient and economical electric service.

(e) As a condition for receiving such certificate the applicant shall file an estimate of construction costs in such detail as the Commission may require. The Commission shall hold a public hearing on each such application and no certificate shall be granted unless the Commission has approved the estimated construction costs and made a finding that such construction will be consistent with the Commission's plan for expansion of electric generating capacity.

(f) The Commission shall maintain an ongoing review of such construction as it proceeds and the applicant shall submit each year during construction a progress report and any revisions in the cost estimates for the construction.

(g) The certification requirements of this section shall not apply to persons who construct an electric generating facility primarily for that person's own use and not for the primary purpose of producing electricity, heat, or steam for sale to or for the public for compensation; provided, however, that such persons shall, nevertheless, be required to report to the Utilities Commission the proposed construction of such a facility before beginning construction thereof. (1965, c. 287, s. 2; 1975, c. 780, s. 1; 1979, c. 652, s. 2.)

**Editor's Note.** — The 1975 amendment added subsections (c) through (f).

The 1979 amendment added subsection (g).

As the rest of the section was not changed by the amendments, only subsections (c) through (g) are set out.

**Purpose.** — This section was enacted to help curb overexpansion of generating facilities beyond the needs of the service area. To this end, the General Assembly used the term "public convenience and necessity" to define the standard to be applied by the Utilities Commission to proposed facilities. *In re Duke Power Co.*, 37 N.C. App. 138, 245 S.E.2d 787 (1978).

The purpose of requiring a certificate of public convenience and necessity before a generating facility can be built is to prevent costly overbuilding. Environmental concerns were generally left to other regulatory agencies,

except as they affect the cost and efficiency of the proposed generating facility. *In re Duke Power Co.*, 37 N.C. App. 138, 245 S.E.2d 787 (1978).

**Substantial Evidence Required to Sustain Grant of Certificate.** — On appeal from a decision of the Commission granting a certificate under this section, the court must look to the findings of fact and conclusions of the Commission and determine if the Commission has considered the factors required by law and if the findings of fact necessary to support granting of the certificate are supported by substantial evidence in view of the whole record. *In re Duke Power Co.*, 37 N.C. App. 138, 245 S.E.2d 787 (1978).

**Public convenience and necessity is based on an element of public need for the proposed service.** *In re Duke Power Co.*, 37 N.C. App. 138, 245 S.E.2d (1978).

### § 62-111. Transfer of franchises; mergers, consolidations and combinations of public utilities.

**State Policy Favors Transfers, etc. —**

In accord with original. See *State ex rel.*

*Utilities Comm'n v. Estes Express Lines*, 33 N.C. App. 99, 234 S.E.2d 628 (1977).

**And a Transfer to a More Competitive Carrier, etc.**

In accord with 1st paragraph in original. See State ex rel. Utilities Comm'n v. Estes Express Lines, 33 N.C. App. 99, 234 S.E.2d 628 (1977).

**Where the issue of dormancy under § 62-112(c) has been raised,** if the Commission finds that the franchise is not dormant, it must then determine if the criteria required by this section for approval of the transfer have been met. If the Commission finds that the franchise

is dormant under § 62-112(c), the application for transfer must be denied, because approval would in effect constitute the granting of a new franchise without satisfying the new authority test and other requirements of § 62-262(e). State ex rel. Utilities Comm'n v. Estes Express Lines, 33 N.C. App. 174, 234 S.E.2d 624 (1977).

**Applied** in State ex rel. Utilities Comm'n v. United Tank Lines, 34 N.C. App. 543, 239 S.E.2d 266 (1977).

**§ 62-112. Effective date, suspension and revocation of franchises; dormant motor carrier franchises.**

**Editor's Note.** — For a survey of 1977 law on common carriers, see 56 N.C.L. Rev. 853 (1978).

**Effect on Transfer of Dormancy Finding.** — Where the issue of dormancy under subsection (c) has been raised, if the Commission finds that the franchise is not dormant, it must then determine if the criteria required by § 62-111 for approval of the transfer have been met. If the Commission finds that the franchise is dormant under subsection (c), the application for transfer must be denied, because approval would in effect constitute the granting of a new franchise without satisfying the new authority test and other requirements of § 62-262(e). State ex rel. Utilities Comm'n v. Estes Express Lines, 33 N.C. App. 174, 234 S.E.2d 624 (1977).

**Evidence Justifying a Finding of Dormancy.** — Under subsection (c) the failure to perform any transportation for compensation under the authority of the franchise for a period of 30 days is *prima facie* evidence that the franchise is dormant. Such evidence is sufficient to justify but not to compel a finding that the franchise is dormant. State ex rel. Utilities Comm'n v. Estes Express Lines, 33 N.C. App. 174, 234 S.E.2d 624 (1977).

**Upon a prima facie showing under subsection (c) the Commission in its discretion may then consider other factors** affecting the performance of such services, and the subsection lists factors which may be considered. If the Commission in its discretion considers other factors it may find that the evidence relating to one or more of these factors rebuts the *prima facie* evidence of dormancy and

that the franchise is not dormant. And if the evidence relating to one or more of these factors, as found by the Commission, is competent, material and substantial, the finding will not be disturbed on appeal under § 62-94(d)(5). State ex rel. Utilities Comm'n v. Estes Express Lines, 33 N.C. App. 174, 234 S.E.2d 624 (1977).

**Evidence Sufficient to Rebut Dormancy Case.** — Where the evidence showed that transferor continuously advertised its services, that it was ready, willing and able to haul both exempt and nonexempt commodities under its franchise, and that it charged published tariff rates in hauling both exempt and nonexempt commodities, it was competent, material and substantial, and was sufficient to rebut the *prima facie* evidence of dormancy and to support the consideration by the Commission of one or more of the "other factors" listed in subsection (c). State ex rel. Utilities Comm'n v. Estes Express Lines, 33 N.C. App. 174, 234 S.E.2d 624 (1977).

**When the irregular route operating authority portion of applicant's franchise certificate was suspended,** any service provided under this part of the certificate naturally was suspended, so that the Commission did not err in concluding that the portion of the franchise certificate providing for irregular route authority was suspended. State ex rel. Utilities Comm'n v. Estes Express Lines, 33 N.C. App. 99, 234 S.E.2d 628 (1977).

**Applied** in State ex rel. Utilities Comm'n v. United Tank Lines, 34 N.C. App. 543, 239 S.E.2d 266 (1977).

## ARTICLE 6A.

### *Radio Common Carriers.*

**§ 62-119. Powers of Commission generally; definitions.**

**Legislative Intent.** — By the enactment of this Article, the General Assembly has decided

that companies or persons providing two-way radio communications for the public perform a

service which is within the public interest. It concluded that in this field of service the public is better served by a regulated monopoly than by competing carriers. State ex rel. Utilities Comm'n v. Simpson, 32 N.C. App. 543, 232 S.E.2d 871 (1977), aff'd, 295 N.C. 519, 246 S.E.2d 753 (1978).

The legislature by enacting this section and §§ 62-120 through 62-124 clearly intended to regulate radio common carriers which offered for hire services consisting of radio or radio-telephone communications to the public. State ex rel. Utilities Comm'n v. Simpson, 295 N.C. 519, 246 S.E.2d 753 (1978).

**Service Is Public Utility.** — The applicant, a medical doctor, whose communication service consisting of seven two-way radios, three "beeper" radio devices and one base station, and is providing service only to 10 other members of the County Medical Society, is engaged in the operation of a public utility within the meaning of § 62-3(23)a6 and subdivision (3) of this section. State ex rel. Utilities Comm'n v. Simpson, 32 N.C. App. 543, 232 S.E.2d 871 (1977), aff'd, 295 N.C. 519, 246 S.E.2d 753 (1978).

## ARTICLE 7.

### *Rates of Public Utilities.*

#### § 62-130. Commission to make rates for public utilities.

**The Utilities Commission, not the courts, has been given authority** to determine the adequacy of a public utility's service and the rates to be charged therefor. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 24 N.C. App. 327, 210 S.E.2d 543 (1975), appeal dismissed, 289 N.C. 286, 221 S.E.2d 322 (1976).

**The authority of the Utilities Commission to set different rates is not unbridled.** There must be substantial differences in service or conditions to justify difference in rates. There must be no unreasonable discrimination between those receiving the same kind and degree of service. State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 424, 230 S.E.2d 647 (1976).

**Where substantial differences in services or conditions do exist, unreasonable application of the same rates may be discriminatory** and thus improper. State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 424, 230 S.E.2d 647 (1976).

**The burden of showing the impropriety of rates established by the Commission lies with the party alleging such discrimination.** State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 424, 230 S.E.2d 647 (1976).

**The consumer has no vested right in existing rates** and the Commission may change the rates as circumstances dictate. State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 424, 230 S.E.2d 647 (1976).

**The Commission has plenary authority to modify an application by a utility** when its modification is based on competent evidence,

findings and conclusions showing it to be just and reasonable. The Commission is not limited by the utility's application in the entry of its final order based on evidence adduced at the hearings. State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 361, 230 S.E.2d 671 (1976).

**And to Correct Rate Schedules.** — In the unlikely event that other costs of the utility should decline, the Commission, either on its own motion or that of another interested party, has plenary authority to intervene and make corrections in the utility's rate schedules including, if circumstances should require it, the abrogation of the fuel clause. State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 327, 230 S.E.2d 651 (1976).

**North Carolina rates may not be structured by external system usage.** Such action is outside the intended scope of the Commission's authority under § 62-2. State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 424, 230 S.E.2d 647 (1976).

**Fuel adjustment clause formula used by power company qualified as a valid part of a rate or rate schedule** within the meaning of this section. State ex rel. Utilities Comm'n v. Edmisten, 26 N.C. App. 662, 217 S.E.2d 201 (1975), aff'd, 291 N.C. 361, 230 S.E.2d 671 (1976).

**Cited in** State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 289 N.C. 286, 221 S.E.2d 322 (1976); State ex rel. North Carolina Util. Comm'n v. Transylvania Util. Co., 30 N.C. App. 336, 226 S.E.2d 824 (1976).

#### § 62-131. Rates must be just and reasonable; service efficient.

##### **Duty and Authority of Commission.** —

The Utilities Commission, not the Supreme

Court or the Court of Appeals, has been given the authority to determine the adequacy of a

public utility's service and the rates to be charged therefor. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 24 N.C. App. 327, 210 S.E.2d 543 (1975), appeal dismissed, 289 N.C. 286, 221 S.E.2d 322 (1976).

**Duty of Utility to Render Adequate Service.** —

It was not the intent of the legislature to require the Commission to fix rates without any regard to the quality of the service rendered by the utility and thus to assure a "complacent monopoly" a "fair return upon the fair value of its properties" while it persists in rendering mediocre service and turns a deaf ear both to customer complaints and to Commission orders for improvement. On the contrary, the quality of the service rendered is, necessarily, a factor to be considered in fixing the "just and reasonable" rate therefor. State ex rel. Utilities

Comm'n v. General Tel. Co. of Southeast, 285 N.C. 671, 208 S.E.2d 681 (1974).

The word "rate" used in the Public Utilities Act refers not only to the monetary amount which each customer must ultimately pay but also to the published method or schedule by which that amount is figured. State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 327, 230 S.E.2d 651 (1976).

There is nothing in the applicable provisions of the Public Utilities Act which prohibits the use of a fossil fuel adjustment clause in the context of the factual circumstances which the utility and the Commission face in a given case. State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 327, 230 S.E.2d 651 (1976).

Cited in State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 424, 230 S.E.2d 647 (1976).

**§ 62-132. Rates established under this Chapter deemed just and reasonable; remedy for collection of unjust or unreasonable rates.**

**Editor's Note.** — For survey of 1976 case law dealing with administrative law, see 55 N.C.L. Rev. 898 (1977).

There is in Article 7 a clear statutory dichotomy between rates which are made, fixed or established by the Commission on the one hand and those which are simply permitted or allowed to go into effect at the instance of the utility on the other. Rates which are established by the Commission, that is after a full hearing, findings, conclusion and a formal order, "shall be deemed just and reasonable, and any rate charged by any public utility different from those so established shall be deemed unjust and unreasonable." Rates which the Commission simply allows to go into effect by any of the methods described in §§ 62-134 and 62-135 are subject to being challenged by interested parties or the Commission itself and after a "hearing thereon, if the Commission shall find the rates or charges collected to be other than the rates

established by the Commission, and to be unjust, unreasonable, discriminatory or preferential, the Commission may" order refund pursuant to the provisions of this section. State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 327, 230 S.E.2d 651 (1976).

**Attorney General Not Prejudiced Where Refund Could Be Sought.** — The Attorney General was not prejudiced by the action of the Commission in allowing an exploration tracking rate increase to go into effect without a hearing since a refund could be sought under this section. State ex rel. Utilities Comm'n v. Edmisten, 294 N.C. 598, 242 S.E.2d 862 (1978).

A refund pursuant to this section may be ordered even absent a utility's agreement to provide one. State ex rel. Utilities Comm'n v. Edmisten, 294 N.C. 598, 242 S.E.2d 862 (1978).

Stated in State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 424, 230 S.E.2d 647 (1976).

**§ 62-133. How rates fixed.**

(b) In fixing such rates, the Commission shall:

- (1) Ascertain the reasonable original cost of the public utility's property used and useful, or to be used and useful within a reasonable time after the test period, in providing the service rendered to the public within this State, less that portion of the cost which has been consumed by previous use recovered by depreciation expense plus the reasonable original cost of investment in plant under construction (construction work in progress). In ascertaining the cost of the public utility's property, construction work in progress as of the effective date of this subsection shall be excluded until such plant comes into service but

reasonable and prudent expenditures for construction work in progress after the effective date of this subsection shall be included subject to the provisions of subparagraph (b) (5) of this section.

- (2) Estimate such public utility's revenue under the present and proposed rates.
  - (3) Ascertain such public utility's reasonable operating expenses, including actual investment currently consumed through reasonable actual depreciation.
  - (4) Fix such rate of return on the cost of the property ascertained pursuant to subdivision (1) as will enable the public utility by sound management to produce a fair return for its shareholders, considering changing economic conditions and other factors, as they then exist, to maintain its facilities and services in accordance with the reasonable requirements of its customers in the territory covered by its franchise, and to compete in the market for capital funds on terms which are reasonable and which are fair to its customers and to its existing investors.
  - (4a) Require each public utility to discontinue capitalization of the composite carrying cost of capital funds used to finance construction (allowance for funds) on the construction work in progress included in its rate base upon the effective date of the first and each subsequent general rate order issued with respect to it after the effective date of this subsection; allowance for funds may be capitalized with respect to expenditures for construction work in progress not included in the utility's property upon which the rates were fixed. In determining net operating income for return, the Commission shall not include any capitalized allowance for funds used during construction on the construction work in progress included in the utility's rate base.
  - (5) Fix such rates to be charged by the public utility as will earn in addition to reasonable operating expenses ascertained pursuant to subdivision (3) of this subsection the rate of return fixed pursuant to subdivisions (4) and (4a) on the cost of the public utility's property ascertained pursuant to subdivision (1).
- (c) The original cost of the public utility's property, including its construction work in progress, shall be determined as of the end of the test period used in the hearing and the probable future revenues and expenses shall be based on the plant and equipment in operation at that time. The test period shall consist of 12 months' historical operating experience prior to the date the rates are proposed to become effective, but the Commission shall consider such relevant, material and competent evidence as may be offered by any party to the proceeding tending to show actual changes in costs, revenues or the cost of the public utility's property used and useful, or to be used and useful within a reasonable time after the test period, in providing the service rendered to the public within this State, including its construction work in progress, which is based upon circumstances and events occurring up to the time the hearing is closed.

(1975, c. 184, s. 2; 1977, c. 691, ss. 2, 3.)

#### I. GENERAL CONSIDERATION.

##### **Editor's Note. —**

The 1975 amendment rewrote the second sentence of subsection (c). The amendatory act provides that it shall not affect pending litigation.

The 1977 amendment, in subsection (b), rewrote subdivision (1), substituted "cost of the property ascertained pursuant to subdivision

(1)" for "fair value of the property" and "fair return for its shareholders" for "fair profit for its stockholders" in subdivision (4), added subdivision (4a), and substituted "subdivisions (4) and (4a)" for "paragraph (4)" in subdivision (5). In subsection (c), the amendment added "the original cost of" in the first sentence, substituted "including its construction work in progress" for "and its fair value" in the first

sentence, and in the second sentence, substituted "the cost" for "the value" and inserted "or to be used and useful within a reasonable time after the test period" and "including its construction work in progress."

Session Laws 1977, c. 691, s. 4, provides: "This act shall become effective with respect to rate applications filed with North Carolina Utilities Commission on and after July 1, 1979."

As the rest of the section was not changed by the amendment, only subsections (b) and (c) are set out.

For survey of 1972 case law on public utility rate regulation, see 51 N.C.L. Rev. 1140 (1973).

For survey of 1974 case law on public utilities, see 53 N.C.L. Rev. 1083 (1975).

For survey of 1976 case law dealing with administrative law, see 55 N.C.L. Rev. 898 (1977).

For a survey of 1977 law on public utility rate regulation, see 56 N.C.L. Rev. 847 (1978).

**Purpose of Chapter.** —

The provisions of this Chapter designed to assure the utility of adequate revenues are in the nature of corollaries to the basic proposition that the public is entitled to adequate service at reasonable rates and safeguards against administrative action which would violate constitutional protections by confiscation of the utility's property. Without such assurance, the owners of capital would not invest it in the utility's bonds or stock and the utility could not provide the plant necessary for the rendering of adequate service. State ex rel. Utilities Comm'n v. General Tel. Co. of Southeast, 285 N.C. 671, 208 S.E.2d 681 (1974).

The primary purpose of this Chapter is not to guarantee to the stockholders of a public utility constant growth in the value of and in the dividend yield from their investment, but is to assure the public of adequate service at a reasonable charge. State ex rel. Utilities Comm'n v. General Tel. Co. of Southeast, 285 N.C. 671, 208 S.E.2d 681 (1974).

**Purpose of Subsection (f).** — The purpose of subsection (f) of this section is to allow the retailer to automatically pass on to the consumer changes in the wholesale cost of the natural gas, over which neither the retailer nor the Utilities Commission has control, whenever the natural gas suppliers' price is revised upward or downward, thus avoiding costly and protracted rate proceedings. State ex rel. Utilities Comm'n v. CF Indus., Inc., 39 N.C. App. 477, 250 S.E.2d 716 (1979).

**Applied** in State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 22 N.C. App. 714, 207 S.E.2d 771; State ex rel. Utilities Comm'n v. Edmisten, 26 N.C. App. 662, 217 S.E.2d 201 (1975).

**Quoted** in State ex rel. North Carolina Util. Comm'n v. Transylvania Util. Co., 30 N.C. App. 336, 226 S.E.2d 824 (1976).

**Cited** in State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 289 N.C. 286, 221 S.E.2d 322 (1976).

## II. UTILITIES COMMISSION.

**Commission Exercises Subjective Judgment.** — Under this section the weight to be given the respective indications of fair value, the determination of the total amount reasonably necessary for working capital and the determination of what constitutes a fair rate of return requires exercise of a subjective judgment by the Commission. State ex rel. Utilities Comm'n v. Edmisten, 29 N.C. App. 428, 225 S.E.2d 101, aff'd, 291 N.C. 424, 230 S.E.2d 647 (1976).

**When the record, considered as a whole, contains substantial evidence supporting the subjective judgment of the Commission** on any of the factors in the fixing of reasonable rates under this section, the conclusion reached by the Commission may not be disturbed by a reviewing court merely because the court's subjective judgment is different from that of the Commission, nor is the Commission required to accept as conclusive the subjective judgment of a witness, even though the record contains no expression of a contrary opinion by another witness. State ex rel. Utilities Comm'n v. Edmisten, 29 N.C. App. 428, 225 S.E.2d 101, aff'd, 291 N.C. 424, 230 S.E.2d 647 (1976).

**The responsibility for fixing rates, etc.** —

It is the Commission's duty to sift through the evidence and draw a conclusion therefrom as to a fair and reasonable rate of return. State ex rel. Utilities Comm'n v. Mebane Home Tel. Co., 35 N.C. App. 588, 242 S.E.2d 165 (1978).

**The findings of the Commission, when supported, etc.** —

When a telephone company offered substantial evidence to show that there was no significant excess plant margin, this conflict of evidence presented a question of fact upon which the finding of the Commission was conclusive and could not be disturbed by the reviewing court, even though the court might have reached a different conclusion thereon. State ex rel. Utilities Comm'n v. General Tel. Co. of Southeast, 285 N.C. 671, 208 S.E.2d 681 (1974).

If there is competent evidence to support the findings and conclusions of the Commission, they will be upheld by the reviewing court. State ex rel. Utilities Comm'n v. Mebane Home Tel. Co., 35 N.C. App. 588, 242 S.E.2d 165 (1978).

The Commission's findings, supported by substantial evidence, may not properly be set aside by the reviewing court merely because a different conclusion could have been reached upon the evidence. State ex rel. Utilities Comm'n v. Mebane Home Tel. Co., 35 N.C. App. 588, 242 S.E.2d 165 (1978).

**Commission is to determine the credibility of evidence** before it, even though such evidence be uncontradicted by another witness. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 24 N.C. App. 327, 210 S.E.2d 543 (1975), appeal dismissed, 289 N.C. 286, 221 S.E.2d 322 (1976).

**Reversing Determination of Commission.** —

The decision of the Commission with regard to rates for public utilities will be upheld by the Court of Appeals on appeal unless it is assailable on one of the grounds enumerated in § 62-94(b). State ex rel. Utilities Comm'n v. Mehane Home Tel. Co., 35 N.C. App. 588, 242 S.E.2d 165 (1978).

**Commission Must Comply with Statutory Procedures.** — The Utilities Commission acted in excess of its statutory authority when it permitted the North Carolina Natural Gas Corporation to pass on additional costs resulting solely from an increase in storage capacity without complying with the statutory procedures required for a general rate case. State ex rel. Utilities Comm'n v. CF Indus., Inc., 39 N.C. App. 477, 250 S.E.2d 716 (1979).

### III. FIXING OF RATES.

#### A. In General.

The word "rate" used in the Public Utilities Act refers not only to the monetary amount which each customer must ultimately pay but also to the published method or schedule by which that amount is figured. State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 327, 230 S.E.2d 651 (1976).

**It is the fuel clause,** a formula for figuring certain monetary additions or subtractions to a customer's bill, not the ultimate amount so figured which constitutes that part of the utility's published schedule subject to the provisions of the Public Utilities Act. State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 327, 230 S.E.2d 651 (1976).

**Rate-making is, of necessity, a matter of estimate and prediction since rates are set for the future.** State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 327, 230 S.E.2d 651 (1976).

**Objective of Rate-Making.** —

At best, the result of the complex rate-making procedure is an approximation of the objective of fixing a fair rate of return on fair value. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 24 N.C. App. 327, 210 S.E.2d 543 (1975), appeal dismissed, 289 N.C. 286, 221 S.E.2d 322 (1976).

**Manner of Arriving at Rate.** —

Rates charged by one telephone company do not, per se, constitute a standard by which to determine the reasonableness of those of another company, even when the territories served and operating conditions are similar. The probative value of such evidence is slight at best, but where there is evidence of substantial similarity of conditions, evidence of comparative

rates may have some relevancy for use as a guide to the limits of the zone of reasonableness. State ex rel. Utilities Comm'n v. General Tel. Co. of Southeast, 285 N.C. 671, 208 S.E.2d 681 (1974).

**Increases in Retail Rates Must Be Apportioned Pursuant to Subsections (a) through (c).** — Any increase in the retail rates attributable to charges by a wholesaler of natural gas for storage capacity must be apportioned in a general rate case pursuant to subsections (a) through (c) of this section. State ex rel. Utilities Comm'n v. CF Indus., Inc., 39 N.C. App. 477, 250 S.E.2d 716 (1979).

There is nothing in the applicable provisions of the Public Utilities Act which prohibits the use of a fossil fuel adjustment clause in the context of the factual circumstances which the utility and the Commission face in a given case. State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 327, 230 S.E.2d 651 (1976).

For a discussion of the operation of and the authorities supporting the use of fuel adjustment clauses, see State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 327, 230 S.E.2d 651 (1976).

**The Commission must be given broad discretion with respect to the extent which it will hear evidence relating to a particular schedule when the basic question for consideration is:** Does the utility need an increase in rates to function effectively or, conversely, can the utility continue to operate, provide efficient service to its customers, and make a fair return to the owners of its properties, or may it so function after a reduction in rates. State ex rel. Utilities Comm'n v. County of Harnett, 30 N.C. App. 24, 226 S.E.2d 515 (1976).

#### B. Rate Base — Value of Investments, Property, etc.

**Contributions in aid of utility construction must be excluded from rate base.** State ex rel. Utilities Comm'n v. Heater Util., Inc., 288 N.C. 457, 219 S.E.2d 56 (1975), decided prior to 1979 amendment.

The term, "the public utility's property used and useful in providing the service," appearing in subdivision (b)(1) was not intended by the legislature to include that portion of the utility plant in service represented by contributions made by the utility's patrons in aid of construction. State ex rel. Utilities Comm'n v. Heater Util., Inc., 288 N.C. 457, 219 S.E.2d 56 (1975), decided prior to 1979 amendment.

**No Matter What Source.** — It makes no difference whether contributions to the utility company were made initially by customers or by land development companies, or whether some of the latter were closely related to the utility company. The controlling factor is whether the utility company's customers ultimately bore the cost of such contributions. State ex rel. Utilities

Comm'n v. Heater Util., Inc., 288 N.C. 457, 219 S.E.2d 56 (1975), decided prior to 1979 amendment.

**"Contribution" Correctly Excluded.** — The Utilities Commission did not err in excluding from the rate base of a water utility an amount representing the difference between the original cost of a water system constructed by the developers of a real estate subdivision and the price paid to such developers by the water utility where the Commission found that such difference amounted to an indirect payment from the customers to the utility through the purchase of their lots, which allowed the original owners to sell the water system to the utility for less than the probable cost of installation. State ex rel. Utilities Comm'n v. Heater Util., Inc., 288 N.C. 457, 219 S.E.2d 56 (1975), decided prior to 1979 amendment.

**Commission not required to include contributed plant in applicant's fair value rate base.** State ex rel. Utilities Comm'n v. Heater Util., Inc., 26 N.C. App. 404, 216 S.E.2d 487, aff'd, 288 N.C. 457, 219 S.E.2d 56 (1975), decided prior to 1979 amendment.

#### Balance on Review. —

In accord with 4th paragraph in original. See State ex rel. Utilities Comm'n v. Mebane Home Tel. Co., 35 N.C. App. 588, 242 S.E.2d 165 (1978).

#### C. Operating Expenses and Working Capital.

**Terms to Be Liberally Interpreted and Applied.** — When a narrow construction of the operating expense element of a regulatory act would frustrate the purposes of the act, the term should be liberally interpreted and applied. State ex rel. Utilities Comm'n v. Edmisten, 294 N.C. 598, 242 S.E.2d 862 (1978).

A restrictive interpretation of the operating expense element of the rate-making formula would severely limit the ability of the commission to act in the best interest of the consuming public in emergency situations. State ex rel. Utilities Comm'n v. Edmisten, 294 N.C. 598, 242 S.E.2d 862 (1978).

**Normal Assumption as to Costs.** — In considering whether the fuel adjustment clause would ever, in fact, operate to increase the utility's rate of return, the Commission was entitled to act on the normal assumption in rate cases generally, there being no evidence to the contrary, that other costs of the utility would not decline but would probably increase or at least remain fairly constant. State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 327, 230 S.E.2d 651 (1976).

**Subsections (b)(2), (b)(3) and (c) contemplate that the Commission will consider "probable future revenues and expenses" in setting rates for the future.** Obviously, conditions do not remain static. State

ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 327, 230 S.E.2d 651 (1976).

**The Commission can take into account the future effect of inflation** by fixing rates slightly in excess of that which is necessary to meet the test of reasonableness. State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 327, 230 S.E.2d 651 (1976).

**The purpose of an annual allowance for depreciation** and the resulting accumulation of a depreciation reserve is not, as is sometimes erroneously supposed, to provide the utility with a fund by which it may purchase a replacement for the property when it is worn out. The purpose of the allowance is to enable the utility to recover the cost of such property to it. State ex rel. Utilities Comm'n v. Heater Util., Inc., 288 N.C. 457, 219 S.E.2d 56 (1975).

#### Depreciation Deductions. —

In accord with 1st paragraph in original. See State ex rel. Utilities Comm'n v. Heater Util., Inc., 288 N.C. 457, 219 S.E.2d 56 (1975).

**Depreciation Based on Original Cost.** — Subdivision (b)(3) clearly directs that the annual allowance for depreciation of durable properties, such as a pipeline, be based upon the original cost of the property to the utility and not upon either its current fair value or the cost of installation borne by a former owner, such as the real estate developers in the present case. State ex rel. Utilities Comm'n v. Heater Util., Inc., 288 N.C. 457, 219 S.E.2d 56 (1975).

**Disallowance of a contributions item** was a proper exercise of the Commission's discretion in determining the telephone company's reasonable operating expenses. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 24 N.C. App. 327, 210 S.E.2d 543 (1975), appeal dismissed, 289 N.C. 286, 221 S.E.2d 322 (1976).

A \$414,111 understatement of working capital, which in turn caused an identical understatement of the fair value of Southern Bell's property used and useful, was not sufficiently prejudicial to disturb the order of the Commission. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 24 N.C. App. 327, 210 S.E.2d 543 (1975), appeal dismissed, 289 N.C. 286, 221 S.E.2d 322 (1976).

**Taxes constitute an operating expense item.** State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 24 N.C. App. 327, 210 S.E.2d 543 (1975), appeal dismissed, 289 N.C. 286, 221 S.E.2d 322 (1976).

Rates for use of a utility's service are set at a level which will enable the company to pay, among other items, its anticipated tax expense. If, by virtue of some change in the tax law, it develops that the company did not incur the anticipated expense, for the payment of which it collected revenues in prior months, its rates for present and future service may not be cut, on that account, below what it otherwise would be

entitled to charge for the present or future service. State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 451, 232 S.E.2d 184 (1977).

**Tracking Rate Increases as Operating Expenses.** — Tracking rate increases, designed to recover the reasonable costs of approved exploration projects, must be said to be operating expenses if practical effect is to be given to this chapter where the Commission has found that if no new supply source were obtained, the utilities would be unable to supply adequate service to their customers. State ex rel. Utilities Comm'n v. Edmisten, 294 N.C. 598, 242 S.E.2d 862 (1978).

**Tracking Rate Increases Not Violative of Equal Protection.** — Exploration tracking rate increases were not in violation of equal protection by virtue of having been made without any attempt to determine which customers would benefit, since it was within the authority of the Commission to determine that all gas rate-payers would benefit from increased supplies of natural gas, both through assured availability and improvement in the State's economy. State ex rel. Utilities Comm'n v. Edmisten, 294 N.C. 598, 242 S.E.2d 862 (1978).

**Funding of Exploration Projects.** — The severe adverse economic effects sought to be avoided by approval and funding of exploration projects through tracking rate increases provided for by rule present a sufficient public concern to outweigh the infringement of ratepayers' freedom of contract, if any there be, arising from the rate increases ordered by the Utilities Commission. State ex rel. Utilities Comm'n v. Edmisten, 294 N.C. 598, 242 S.E.2d 862 (1978).

**In the unlikely event that other costs of the utility should decline,** the Commission, either on its own motion or that of another interested party, has plenary authority to intervene and make corrections in the utility's rate schedules including, if circumstances should require it, the abrogation of the fuel clause. State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 327, 230 S.E.2d 651 (1976).

#### D. Rate of Return.

**It is impossible to fix rates which will give the utility each day a fair return,** and no more, upon its plant in service on that day. The best that can be done, both from the standpoint of the company and from the standpoint of the person served, is to fix rates on the basis of a substantial period of time. Otherwise, rate hearings and adjustments would be a perpetual process. State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 327, 230 S.E.2d 651 (1976).

**A public utility corporation is entitled to, etc. —**

Even though a utility contemplates no substantial expansion of its plant, and so presently does not contemplate the issuance of

either stocks or bonds, it is, nevertheless, entitled to charge rates sufficient to enable it to earn a fair rate or return, as defined in subsection (b)(4), upon the fair value of its properties used and useful in rendering its service in this State. State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 575, 232 S.E.2d 177 (1977).

#### Fair Rate of Return Test. —

Since the rate of return on the fair value (now reasonable original cost) of its properties which will enable a utility company to attract the capital it needs (the essence of the Bluefield test) cannot be pinpointed with absolute accuracy, it is universally recognized that, for a utility rendering acceptable service, there is a zone of reasonableness extending over a few hundredths of one percent, within which a rate of return fixed by a regulatory commission will not be disturbed by the courts. State ex rel. Utilities Comm'n v. General Tel. Co. of Southeast, 285 N.C. 671, 208 S.E.2d 681 (1974).

The rate-making procedure prescribed in this section is designed to yield to the utility a return which will meet the test laid down in *Bluefield Waterworks & Imp. Co. v. Public Serv. Comm'n*, 262 U.S. 679, 43 S. Ct. 675, 67 L. Ed. 1176 (1923). State ex rel. Utilities Comm'n v. General Tel. Co. of Southeast, 285 N.C. 671, 208 S.E.2d 681 (1974).

To require the Commission in a general rate case to go into minute details with respect to each of the proposed increases and the possible inequalities which might be created thereby would distract its attention from the crucial question, namely: What is a fair rate of return on company's investment so as to enable it by sound management to pay a fair profit to its stockholders and to maintain and expand its facilities and services in accordance with the reasonable requirements of its customers in the territory covered by its franchise. State ex rel. Utilities Comm'n v. County of Harnett, 30 N.C. App. 24, 226 S.E.2d 515 (1976).

**No Compensation for Past Deficit. —** A failure of the utility, in a previous period, to earn the anticipated return over and above its then expenses, does not authorize it to charge its present customers a rate higher than reasonable for present service in order to compensate for the past deficit. Prospective rate-making to recover unexpected past expense, or to refund expected past expense which did not materialize, is as improper as is retroactive rate-making. State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 451, 232 S.E.2d 184 (1977).

#### IV. TEST PERIOD.

##### The factors used in fixing rates, etc. —

Estimates regarding probable future revenues and expenses must be based upon the utility's plant and equipment actually in operation at the end of the test period. State ex

rel. Utilities Comm'n v. Edmisten, 291 N.C. 327, 230 S.E.2d 651 (1976).

**Adjustments, etc. —**

The company's experience during the test period regarding revenues produced and operating expenses incurred is the basis for a reasonably accurate estimate of what may be anticipated in the near future if, but only if, appropriate pro forma adjustments are made for abnormalities which existed in the test period and for changes in conditions occurring during the test period. State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 327, 230 S.E.2d 651 (1976).

## V. OTHER FACTS.

### A. In General.

**Other Facts Which Commission, etc. —**

In accord with original. See State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 327, 230 S.E.2d 651 (1976).

**B. Quality and Adequacy of Service.**

**Commission Must Consider Quality of Service. —**

It was not the intent of the legislature to require the Commission to fix rates without any regard to the quality of the service rendered by the utility and thus to assure a "complacent monopoly" a "fair return upon the fair value (now reasonable original cost) of its properties" while it persists in rendering mediocre service and turns a deaf ear both to customer complaints and to Commission orders for improvement. On the contrary, the quality of the service rendered is, necessarily, a factor to be considered in fixing the "just and reasonable" rate therefor. State ex rel. Utilities Comm'n v. General Tel. Co. of Southeast, 285 N.C. 671, 208 S.E.2d 681 (1974).

When, upon substantial evidence, a public utility is found to be rendering grossly inadequate service, due to bad management and managerial indifference, and the rates presently

charged by it yield a return sufficient to pay the interest on its indebtedness and a substantial dividend upon its stock, but less than that which would be deemed a fair return upon the fair value (now reasonable original cost) of its properties were the service adequate, the Utilities Commission may lawfully deny its authority to increase its rates for such service. State ex rel. Utilities Comm'n v. General Tel. Co. of Southeast, 285 N.C. 671, 208 S.E.2d 681 (1974).

Section 62-133 lays down the procedure by which the Commission is to fix rates which will enable the utility "by sound management" to pay all of its costs of operation, including maintenance, depreciation and taxes, and have left a fair return upon the fair value (now reasonable original cost) of its properties, but this must be applied in the light of the provisions of this Chapter relating to the duty of the utility to render adequate service. State ex rel. Utilities Comm'n v. General Tel. Co. of Southeast, 285 N.C. 671, 208 S.E.2d 681 (1974).

Inadequacy of service due not to the condition of the properties but to inefficient personnel, bad management and the indifference of a "complacent monopoly" is an entirely different matter; this does not relate to the value of the properties, but it does relate to the value of the service and to the reasonableness of the rates proposed to be charged therefor. State ex rel. Utilities Comm'n v. General Tel. Co. of Southeast, 285 N.C. 671, 208 S.E.2d 681 (1974).

**Subtraction for Consistently Poor Service. —**

In accord with original. See State ex rel. Utilities Comm'n v. General Tel. Co. of Southeast, 285 N.C. 671, 208 S.E.2d 681 (1974).

**The Bluefield test** assumes reasonably good service. State ex rel. Utilities Comm'n v. General Tel. Co. of Southeast, 285 N.C. 671, 208 S.E.2d 681 (1974).

## § 62-133.1. Small water and sewer utility rates.

**Section Proscribes Commission's Power. —** By enacting this section, the General Assembly proscribed the Commission's power to disapprove charges called for in uniform contracts between utilities and nonuser property owners if the charges do not exceed those expressly authorized by the statute. State ex rel. North Carolina Util. Comm'n v. Transylvania Util. Co., 30 N.C. App. 336, 226 S.E.2d 824, cert. denied, 291 N.C. 179, 229 S.E.2d 692 (1976).

This section was enacted in direct response to the Utilities Commission's conclusion that

nonusers were not "consumers" of the utility and that an "availability charge" could not be made to property owners solely because they owned land in an area served by the utility. State ex rel. North Carolina Util. Comm'n v. Transylvania Util. Co., 30 N.C. App. 336, 226 S.E.2d 824, cert. denied, 291 N.C. 179, 229 S.E.2d 692 (1976).

**Cited** in State ex rel. Utilities Comm'n v. Heater Util., Inc., 288 N.C. 457, 219 S.E.2d 56 (1975).

## § 62-134. Change of rates; notice; suspension and investigation.

(e) Notwithstanding the provisions of this Article, upon application by any public utility for permission and authority to increase its rates and charges based

solely upon the increased cost of fuel used in the generation or production of electric power, the Commission shall suspend such proposed increase for a period not to exceed 90 days beyond the date of filing of such application to increase rates. Upon motion of the Commission or application of any person having an interest in said rate, the Commission shall set for hearing any request for decrease in rates or charges based solely upon a decrease in the cost of fuel. The Commission shall promptly investigate applications filed pursuant to provisions of this subsection and shall hold a public hearing within 30 days of the date of the filing of the application to consider such application, and shall base its order upon the record adduced at the hearing, such record to include all pertinent information available to the Commission at the time of hearing. The order responsive to an application shall be issued promptly by the Commission but in no event later than 90 days from the date of filing of such application. A proceeding under this subsection shall not be considered a general rate case. All monthly fuel adjustment rate increases based solely upon the increased cost of fuel, as to each public utility, as presently approved by the Commission shall fully terminate effective September 1, 1975, except that the same shall be earlier terminated as to each such public utility upon the effective date of any final order of the Commission under this section; provided, however, that the termination date of September 1, 1975, shall not apply to any public utility which has filed an application under this subsection on or before July 1, 1975, and where the Commission has not issued a final order by September 1, 1975. In any proceeding pursuant to this subsection, any person directly interested in the proceeding shall have a full right of intervention.

(f) The Commission may adopt rules prescribing the information and exhibits required to be filed with any applications, or tariff for an increase in utility rates, including but not limited to all of the evidence or proof through the end of the test period which the utility will rely on at any hearing on such increase, and the Commission may suspend such increase until such data, information or exhibits are filed, in addition to the time provided for suspension of such increase in other provisions of this Chapter. (1933, c. 307, s. 7; 1939, c. 365, s. 3; 1941, c. 97; 1945, c. 725; 1947, c. 1008, s. 24; 1949, c. 1132, s. 22; 1959, c. 422; 1963, c. 1165, s. 1; 1971, c. 551; 1973, c. 1444; 1975, c. 243, s. 8; c. 510; c. 867, s. 7.)

**Editor's Note.—**

The first 1975 amendment added subsection (e).

The second 1975 amendment added subsection (f).

The third 1975 amendment added the last sentence in subsection (e).

As the rest of the section was not changed by the amendments, only subsections (e) and (f) are set out.

For a survey of 1977 law on public utility rate regulation, see 56 N.C.L. Rev. 847 (1978).

**Action Constitutional.** — An order entered

ex parte allowing a utility to effectuate a fuel adjustment clause did not, in view of the procedures available to contest such action, violate Art. I, § 19 of the State Constitution. State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 327, 230 S.E.2d 651 (1976).

**Power to Refrain from Prescribing Conditions.** — The power to prescribe conditions under subsection (a), like the power to suspend rate changes, includes the power to refrain from prescribing them. Thus the Commission by its affirmative order may allow applied-for rate changes to become immediately

effective conditionally or unconditionally. State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 327, 230 S.E.2d 651 (1976).

**Statutory Authority Only.** — The Commission is a creation of the legislature and, in fixing rates to be charged by public utilities, exercises the legislative function. It has no authority except that given to it by statute. A fortiori, the Commission has no authority to permit that which is forbidden by this section or to extend a previously granted rate increase which subsection (e) has declared terminated. State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 451, 232 S.E.2d 184 (1977).

**Language of Subsection (b), etc. —**

In accord with original. See State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 327, 230 S.E.2d 651 (1976).

The power granted the Commission by subsection (b) to suspend a requested change in rates is a discretionary one which the Commission may, but need not, exercise. State ex rel. Utilities Comm'n v. Edmisten, 29 N.C. App. 428, 225 S.E.2d 101, aff'd, 291 N.C. 424, 230 S.E.2d 647 (1976).

**Power to Suspend a Portion of Change.** — The discretionary power granted the Commission by subsection (b) to suspend a proposed change in rates for a period not longer than 270 days clearly includes the lesser power to suspend a portion of the change for some lesser period. State ex rel. Utilities Comm'n v. Edmisten, 29 N.C. App. 428, 225 S.E.2d 101, aff'd, 291 N.C. 424, 230 S.E.2d 647 (1976).

**Suspension of Rates May Be, etc. —**

In accord with 1st paragraph in original. See State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 327, 230 S.E.2d 651 (1976).

In accord with 2nd paragraph in original. See State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 327, 230 S.E.2d 651 (1976).

Implicit within the authority granting discretion of whether and for how long to suspend is the discretion to cancel or modify a suspension once it has been made, and nothing in the language of this section suggests that the legislature intended that the Commission could exercise the discretionary authority granted it only if it did so on an all-or-nothing, once-and-for-all basis. State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 327, 230 S.E.2d 651 (1976).

**The Utilities Commission had authority to enter an interim order, etc. —**

Section 62-135 and this section clearly authorize the Commission to permit rate schedule changes applied for by a utility to be placed into effect on an interim basis before hearing and final determination. State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 327, 230 S.E.2d 651 (1976).

**Subsection (e) deals specifically with the continuation of previously granted rate increases based solely on the increased cost of fuel.** The Commission's "decision" that the

legislature, in enacting this statute, did not intend to deny the utility "recovery of its July and August 1975 fuel expenses actually incurred" is not an interpretation of the statute but a nullification of it, which is beyond the authority of the Commission. The wisdom and fairness of the legislature's determination, clearly expressed, may not be reviewed by the Commission, or even by the courts in the absence of a constitutional question. State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 451, 232 S.E.2d 184 (1977).

**Subsection (e) did not roll back electric power rates.** On the contrary, it authorized the Commission, after hearing, to incorporate into the basic rates of the utility, chargeable on and after September 1, 1975, an increase determined by the then cost of coal. State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 451, 232 S.E.2d 184 (1977).

**Fuel Adjustment Clause.** — For case discussing procedure to be followed in request for coal adjustment clause prior to the 1975 amendment, see State ex rel. Utilities Comm'n v. Edmisten, 26 N.C. App. 662, 217 S.E.2d 201 (1975).

**The burden of proof** is upon the utility seeking a rate increase to show that the proposed rates are just and reasonable. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 24 N.C. App. 327, 210 S.E.2d 543 (1975), appeal dismissed, 289 N.C. 286, 221 S.E.2d 322 (1976).

**Commission's findings, supported by substantial evidence, may not properly be set aside** by the reviewing court merely because a different conclusion could have been reached upon the evidence. State ex rel. Utilities Comm'n v. Mebane Home Tel. Co., 35 N.C. App. 588, 242 S.E.2d 165 (1978).

**Decision Upheld unless Assailable under § 62-94(b).** — The decision of the Commission with regard to rates for public utilities will be upheld by the Court of Appeals on appeal unless it is assailable on one of the grounds enumerated in § 62-94(b). State ex rel. Utilities Comm'n v. Mebane Home Tel. Co., 35 N.C. App. 588, 242 S.E.2d 165 (1978).

**Applied** in State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 361, 230 S.E.2d 671 (1976); State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 477, 232 S.E.2d 199 (1977); State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 478, 232 S.E.2d 200 (1977).

**Quoted** in State ex rel. Commissioner of Ins. v. North Carolina Fire Ins. Rating Bureau, 292 N.C. 471, 234 S.E.2d 720 (1977).

**Stated** in Senior Citizens Clubs v. Duke Power Co., 425 F. Supp. 411 (W.D.N.C. 1976).

**Cited** in State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 289 N.C. 286, 221 S.E.2d 322 (1976); State ex rel. Utilities Comm'n

v. Edmisten, 291 N.C. 575, 232 S.E.2d 177 (1977); State ex rel. Commissioner of Ins. v. North

Carolina Auto. Rate Administrative Office, 294 N.C. 60, 241 S.E.2d 324 (1978).

### § 62-135. Temporary rates under bond.

#### Purpose. —

In accord with original. See State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 327, 230 S.E.2d 651 (1976).

**Changes on Interim Basis.** — Section 62-134 and this section clearly authorize the Commission to permit rate schedule changes applied for by a utility to be placed into effect on an interim basis before hearing and final determination. State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 327, 230 S.E.2d 651 (1976).

**Preference as to Interests of Current Customers.** — The power of the Commission to suspend a rate increase under investigation for a six months' period gives an absolute preference for that period to the interest of current customers in paying no more than they have been paying for the electricity they consume. Senior Citizens Clubs v. Duke Power Co., 425 F. Supp. 411 (W.D.N.C.), aff'd, 425 U.S. 928, 96 S. Ct. 1658, 48 L. Ed. 2d 172 (1976).

**Conditional Preference as to Future Customers.** — If increases may be suspended for longer periods, the interest of a utility's future customers may be impaired by the lack of adequate capacity to serve their needs. Thus, under this section, after lapse of the six-month

period during which the interest of present customers has an absolute preference, a conditional preference is given to the interest of future customers by permitting the implementation of the increase subject to mandatory refund to the extent that the implemented increase is larger than the rates ultimately approved by the Commission. Senior Citizens Clubs v. Duke Power Co., 425 F. Supp. 411 (W.D.N.C.), aff'd, 425 U.S. 928, 96 S. Ct. 1658, 48 L. Ed. 2d 172 (1976).

**State Action Absent.** — Implementation of the rate increase without the Commission's approval does not involve the requisite state action in a proceeding under 42 U.S.C. § 1983. Senior Citizens Clubs v. Duke Power Co., 425 F. Supp. 411 (W.D.N.C.), aff'd, 425 U.S. 928, 96 S. Ct. 1658, 48 L. Ed. 2d 172 (1976).

**Applied in State ex rel. Utilities Comm'n v. Edmisten,** 26 N.C. App. 613, 216 S.E.2d 743 (1975).

**Stated in State ex rel. Commissioner of Ins. v. North Carolina Fire Ins. Rating Bureau,** 292 N.C. 471, 234 S.E.2d 720 (1977).

**Cited in State ex rel. Utilities Comm'n v. Edmisten,** 291 N.C. 424, 230 S.E.2d 647 (1976).

### § 62-136. Investigation of existing rates; changing unreasonable rates; certain refunds to be distributed to customers.

**Subsection (a) refers to rate fixing as envisioned by § 62-133.** State ex rel. Utilities Comm'n v. Edmisten, 30 N.C. App. 459, 227 S.E.2d 593, rev'd on other grounds, 291 N.C. 451, 232 S.E.2d 184 (1976).

**Abrogation of Fuel Clause.** — In the unlikely event that other costs of the utility should decline, the Commission, either on its own

motion or that of another interested party, has plenary authority to intervene and make corrections in the utility's rate schedules including, if circumstances should require it, the abrogation of the fuel clause. State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 327, 230 S.E.2d 651 (1976).

### § 62-137. Scope of rate case.

**This section is inapplicable to proceedings conducted under § 62-90(c),** since their scope is limited by statute to the exceptions on which the particular appeal of a final order or decision is based, leaving the Commission without authority to declare the hearings a general rate case or complaint proceeding. The Commission may consider only the grounds upon which the applicant asserts that the Commission's order or

decision is unlawful, unjust, unreasonable or unwarranted, including alleged errors committed by the Commission. State ex rel. Utilities Comm'n v. Edmisten, 294 N.C. 598, 242 S.E.2d 862 (1978).

**Cited in State ex rel. Utilities Comm'n v. County of Harnett,** 30 N.C. App. 24, 226 S.E.2d 515 (1976).

**§ 62-138. Utilities to file rates, service regulations and service contracts with Commission; publication; certain telephone service prohibited.**

(g) No public utility may offer or maintain telephone service to any subscriber to such service who has in use or proposes to place in use equipment which will enable said subscriber to observe or monitor telephone calls directed to or placed by said subscriber unless said subscriber shall agree that such equipment shall be used in conformity with the standards for the use of such equipment adopted by the Commission. (1899, c. 164, s. 7; Rev., s. 1109; 1907, c. 217, s. 5; C. S., s. 1074; 1933, c. 134, s. 8; c. 307, s. 4; 1941, c. 97; 1947, c. 1008, s. 25; 1949, c. 1132, s. 23; 1959, c. 209; 1963, c. 1165, s. 1; 1965, c. 287, s. 7; 1977, c. 799.)

**Editor's Note.** — The 1977 amendment added subsection (g).

As the rest of the section was not changed by the amendment, only subsection (g) is set out.

For a survey of 1977 law on common carriers, see 56 N.C.L. Rev. 853 (1978).

**§ 62-140. Discrimination prohibited.** — (a) No public utility shall, as to rates or services, make or grant any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates or services either as between localities or as between classes of service. The Commission may determine any questions of fact arising under this section; provided that it shall not be an unreasonable preference or advantage or constitute discrimination against any person, firm or corporation or general rate payer for telephone utilities to contract with motels, hotels and hospitals to pay reasonable commissions in connection with the handling of intrastate toll calls charged to a guest or patient and collected by the motel, hotel or hospital; provided further, that payment of such commissions shall be in accordance with uniform tariffs which shall be subject to the approval of the Commission. (1977, 2nd. Sess., c. 1146.)

**Editor's Note.** —

The 1977, 2nd Sess., amendment added the two provisos at the end of the last sentence of subsection (a).

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

**The authority of the Utilities Commission to set different rates is not unbridled.** There must be substantial differences in service or conditions to justify difference in rates. There must be no unreasonable discrimination between those receiving the same kind and degree of service. State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 424, 230 S.E.2d 647 (1976).

**Where substantial differences in services or conditions do exist, unreasonable application of the same rates may be discriminatory and thus improper.** State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 424, 230 S.E.2d 647 (1976).

**Commission May Not Permit Unjustified Service Refusal.** — A refusal by a telephone company to serve without a reasonable justification therefor is a violation of the company's duty and the Commission has no authority to permit it. State ex rel. Utilities Comm'n v. National Merchandising Corp., 288 N.C. 715, 220 S.E.2d 304 (1975).

**What Constitutes Unlawful Discrimination.** —

The cost of coal burned in generating power has, however, no relation whatever to service in any subsequent month. Thus, it, like wage expense, should be borne by the users of the service in the month in which the expense was incurred and may not properly be amortized so as to make subsequent users pay part of this burden. So to cast upon subsequent users the expense of serving prior users is discrimination forbidden by this section. State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 451, 232 S.E.2d 184 (1977).

The language of subsection (a) does not mean that customer classifications, once established by a utility, must remain frozen absent a showing of change of conditions justifying a change in classifications. State ex rel. Utilities Comm'n v. Edmisten, 29 N.C. App. 428, 225 S.E.2d 101, aff'd, 291 N.C. 424, 230 S.E.2d 647 (1976).

The question under subsection (a) is not whether the old classifications, because of some change in conditions or of costs of rendering service, have become unreasonable. Rather, the question is whether the new classifications proposed by the utility are themselves

reasonable. State ex rel. Utilities Comm'n v. Edmisten, 29 N.C. App. 428, 225 S.E.2d 101, aff'd, 291 N.C. 424, 230 S.E.2d 647 (1976).

Cited in State ex rel. Utilities Comm'n v. Farmers Chem. Ass'n, 33 N.C. App. 433, 235 S.E.2d 398 (1977).

**§ 62-152.1. Uniform rates; joint rate agreements among carriers.** — (a) Definitions. — As used in this section, unless the context otherwise requires, the term:

- (1) "Carrier" means any common carrier as defined in G.S. 62-3 (6).
- (2) For purposes of this section, carriers by rail are carriers of the same class, carriers by motor vehicles are carriers of the same class, carriers by pipeline are carriers of the same class, carriers by water are carriers of the same class, carriers by air are carriers of the same class, and freight forwarders are carriers of the same class.
- (3) The term "antitrust laws" means the provisions of Chapter 75 of the General Statutes (N.C.G.S. 75-1, et seq.), relating to combinations in restraint of trade.

(b) For the purpose of achieving a stable rate structure it shall be the policy of this State to fix uniform rates for the same or similar services by carriers of the same class. In order to realize and effectuate this policy and regulatory goal any carrier subject to regulation by this Commission and party to an agreement between or among two or more carriers relating to rates, fares, classifications, divisions, allowances or charges (including charges between carriers and compensation paid or received for the use of facilities and equipment), or rules and regulations pertaining thereto, or procedures for the joint consideration, initiation or establishment thereof, may, under such rules and regulations as the Commission may prescribe, apply to the Commission for approval of the agreement, and the Commission shall by order approve any such agreement (if approval thereof is not prohibited by subsection (d) or (e) of this section) if it finds that, by reason of furtherance of the transportation policy and goal declared in this section and in G.S. 62-2 or G.S. 62-259 as may be pertinent, the relief provided in subsection (h) shall apply with respect to the making and carrying out of such agreement; otherwise, the application shall be denied. The approval of the Commission shall be granted only upon such terms and conditions as the Commission may prescribe as necessary to enable it to grant its approval in accordance with the standard above set forth in this subsection.

(c) Each conference, bureau, committee, or other organization established or continued pursuant to any agreement approved by the Commission under this section shall maintain such accounts, records, files and memoranda and shall submit to the Commission such information and reports as may be prescribed by the Commission, and all the accounts, records, files and memoranda shall be subject to inspection by the Commission or its duly authorized representatives.

(d) The Commission shall not approve under this section any agreement between or among carriers of different classes unless it finds that the agreement is of the character described in subsection (b) of this section and is limited to matters relating to transportation under joint rates or over through routes.

(e) The Commission shall not approve under this section any agreement which establishes a procedure for the determination of any matter through joint consideration unless it finds that under the agreement there is accorded to each party the free and unrestrained right to take independent action after any determination arrived at through such procedure.

(f) The Commission is authorized, upon complaint or upon its own initiative without complaint, to investigate and determine whether any agreement previously approved by it under this section, or terms and conditions upon which the approval was granted is not or are not in conformity with the standards set forth in subsection (b) of this section, or whether any such terms and conditions are not necessary for the purposes of conformity with such standards, and, after

such investigation, the Commission shall by order terminate or modify its approval of such agreement if it finds such action necessary to insure conformity with such standards, and shall modify the terms and conditions upon which such approval was granted to the extent it finds necessary to insure conformity with such standards or to the extent to which it finds such terms and conditions not necessary to insure such conformity. The effective date of any order terminating or modifying approval, or modifying terms and conditions, shall be postponed for such period as the Commission determines to be reasonably necessary to avoid undue hardships.

(g) No order shall be entered under this section except after interested parties have been afforded reasonable notice and opportunity for hearing.

(h) Parties to any agreement approved by the Commission under this section and other parties are, if the approval of such agreement is not prohibited by subsection (d) or (e) of this section, hereby relieved from the operation of the antitrust laws with respect to the making of such agreement, and with respect to the carrying out of such agreement in conformity with the terms and conditions prescribed by the Commission.

(i) Any action of the Commission under this section in approving an agreement, or in denying an application for such approval, or in terminating or modifying its approval of an agreement, or prescribing the terms and conditions upon which its approval is to be granted, or in modifying such terms and conditions, shall be construed as having effect solely with reference to the applicability of the relief provisions of subsection (h) of this section. (1977, c. 219, s. 1.)

**Editor's Note.** — Session Laws 1977, c. 219, s. 2, contains a severability clause.

For a survey of 1977 law on common carriers, see 56 N.C.L. Rev. 853 (1978).

**§ 62-155. Electric power rates to promote conservation.** — (a) It is the policy of the State to conserve energy through efficient utilization of all resources.

(b) If the Utilities Commission after study determines that conservation of electricity and economy of operation for the public utility will be furthered thereby, it shall direct each electric public utility to notify its customers by the most economical means available of the anticipated periods in the near future when its generating capacity is likely to be near peak demand and urge its customers to refrain from using electricity at these peak times of the day. In addition, each public utility shall, insofar as practicable, investigate, develop, and put into service, with approval of the Commission, procedures and devices that will temporarily curtail or cut off certain types of appliances or equipment for short periods of time whenever an unusual peak demand threatens to overload its system.

(c) The Commission itself shall inform the general public as to the necessity for controlling demands for electricity at peak periods and shall require the several electric public utilities to carry out its program of information and education in any reasonable manner.

(d) The Commission shall study the feasibility of and, if found to be practicable, just and reasonable, make plans for the public utilities to bill customers by a system of nondiscriminatory peak pricing, with incentive rates for off-peak use of electricity charging more for peak periods than for off-peak periods to reflect the higher cost of providing electric service during periods of peak demand on the utility system. No order regarding such rates shall be issued by the Commission without a prior public hearing, whether in a single electric utility company rate case or in general orders relating to two or more or all electric utilities.

(e) No Class A electric public utility shall apply for any rate change unless it files at the time of the application a report of the probable effect of the proposed

rates on peak demand on it and its estimate of the kilowatt hours of electricity that will be used by its customers during the ensuing one year and five years from the time such rates are proposed to become effective. (1975, c. 780, s. 2.)

**§ 62-156 to 62-159:** Reserved for future codification purposes.

## ARTICLE 8.

### *Securities Regulation.*

#### **§ 62-160. Permission to pledge assets.**

**Applicable to Interstate Corporations.** — The General Assembly intended this Article to apply to all public utilities doing business in this State whether they be foreign or domestic

corporations and even though they are also engaged in interstate commerce. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 288 N.C. 201, 217 S.E.2d 543 (1975).

#### **§ 62-161. Assumption of certain liabilities and obligations to be approved by Commission; refinancing of public utility securities.**

**Applicable to Interstate Corporation.** — The General Assembly intended this Article to apply to all public utilities doing business in this State whether they be foreign or domestic corporations and even though they are also engaged in interstate commerce. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 288 N.C. 201, 217 S.E.2d 543 (1975).

**The regulation and control by this State over the issuance of securities by a multistate foreign corporation** engaged in interstate commerce, which the attempted enforcement by the Commission of this Article was held necessarily to entail, is to impose such an undue burden on interstate commerce as to make such

regulation and control constitutionally beyond the State's power to enforce. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 22 N.C. App. 714, 207 S.E.2d 771 (1974), aff'd, 288 N.C. 201, 217 S.E.2d 543 (1975).

The Commission may not lawfully require a multistate foreign corporation engaged in interstate commerce to comply with the provisions of Article 8 and issue securities in the future only after first making application to and obtaining an order from the Commission authorizing such issue. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 22 N.C. App. 714, 207 S.E.2d 771 (1974), aff'd, 288 N.C. 201, 217 S.E.2d 543 (1975).

#### **§ 62-171. Commission may act jointly with agency of another state where public utility operates.**

**Applicable to Interstate Corporations.** — The General Assembly intended this Article to apply to all public utilities doing business in this State whether they be foreign or domestic corporations and even though they are also engaged in interstate commerce. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 288 N.C. 201, 217 S.E.2d 543 (1975).

**The regulation and control by this State over the issuance of securities by a multistate foreign corporation** engaged in interstate commerce, which the attempted enforcement by the Commission of this Article was held necessarily to entail, is to impose such an undue burden on interstate commerce as to make such

regulation and control constitutionally beyond the State's power to enforce. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 22 N.C. App. 714, 207 S.E.2d 771 (1974), aff'd, 288 N.C. 201, 217 S.E.2d 543 (1975).

The Commission may not lawfully require a multistate foreign corporation engaged in interstate commerce to comply with the provisions of Article 8 and issue securities in the future only after first making application to and obtaining an order from the Commission authorizing such issue. State ex rel. Utilities Comm'n v. Southern Bell Tel. & Tel. Co., 22 N.C. App. 714, 207 S.E.2d 771 (1974), aff'd, 288 N.C. 201, 217 S.E.2d 543 (1975).

## ARTICLE 9.

### *Acquisition and Condemnation of Property.*

#### **§ 62-180. Use of railroads and public highways.**

The maintenance of a utility pole along a public highway does not constitute an act of negligence unless the pole constitutes a hazard to motorists using the portion of the highway designated and intended for vehicular travel in a proper manner. Shapiro v. Toyota Motor Co., 38 N.C. App. 658, 248 S.E.2d 868 (1978).

The maintenance of a telephone pole 12 and one-half inches beyond the elevated curbing of a road did not constitute an act of negligence in a personal injury action in which a car failed to negotiate a curve and crashed into the pole. Shapiro v. Toyota Motor Co., 38 N.C. App. 658, 248 S.E.2d 868 (1978).

#### **§ 62-190. Right of eminent domain conferred upon pipeline companies; other rights.**

**In General.** — For case reviewing the history of this section, see Colonial Pipeline Co. v. Neill, 296 N.C. 503, 251 S.E.2d 457 (1979).

**Legislative Intent.** — The legislature did not intend pipeline companies to be limited by § 40-2. Colonial Pipeline Co. v. Neill, 296 N.C. 503, 251 S.E.2d 457 (1979).

The history of this section indicates a legislative intent to broaden the scope of the act and to encompass interstate as well as local pipeline companies. Colonial Pipeline Co. v. Neill, 296 N.C. 503, 251 S.E.2d 457 (1979).

**Section 40-2 Does Not Limit This Section.** — The language "pipelines originating in North Carolina" in § 40-2 does not impose a limitation on this section. Colonial Pipeline Co. v. Neill, 296 N.C. 503, 251 S.E.2d 457 (1979).

This section clearly confers the right of eminent domain upon interstate pipeline companies incorporated or domesticated under the laws of North Carolina, regardless of whether their pipelines originate in North Carolina. Colonial Pipeline Co. v. Neill, 296 N.C. 503, 251 S.E.2d 457 (1979).

## ARTICLE 10.

### *Transportation in General.*

#### **§ 62-202. Baggage and freight to be carefully handled.**

**Cited in** Flexlon Fabrics, Inc. v. Wicker Pick-Up & Delivery Serv., Inc., 39 N.C. App. 443, 250 S.E.2d 723 (1979).

## ARTICLE 11.

### *Railroads.*

#### **§ 62-220. Powers of railroad corporations.**

##### **Cross Reference.** —

As to administration of federal railroad revitalization programs by the Department of Transportation, see § 136-44.35.

## ARTICLE 12.

*Motor Carriers.*

**§ 62-260. Exemptions from regulations.** — (a) Nothing in this Chapter shall be construed to include persons and vehicles engaged in one or more of the following services by motor vehicle if not engaged at the time in the transportation of other passengers or other property by motor vehicle for compensation:

- (1) Transportation of passengers or property for or under the control of the State of North Carolina, or any political subdivision thereof, or any board, department or commission of the State, or any institution owned and supported by the State;
- (2) Transportation of passengers by taxicabs when not carrying more than nine passengers or transportation by other motor vehicles performing bona fide taxicab service and not carrying more than nine passengers in a single vehicle at the same time when such taxicab or other vehicle performing bona fide taxicab service is not operated on a regular route or between termini; provided, no taxicab while operating over the regular route of a common carrier outside of a municipality and a residential and commercial zone adjacent thereto, as such zone may be determined by the Commission as provided in (8) of this subsection, shall solicit passengers along such route, but nothing herein shall be construed to prohibit a taxicab operator from picking up passengers along such route upon call, sign or signal from prospective passengers;
- (3) Transportation by motor vehicles owned or operated by or on behalf of hotels while used exclusively for the transportation of hotel patronage between hotels and local railroad or other common carrier stations;
- (4) Transportation of passengers to and from airports and passenger airline terminals when such transportation is incidental to transportation by aircraft;
- (5) Transportation of passengers by trolley buses operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street railway service;
- (6) Transportation by motor vehicles used exclusively for the transportation of passengers to or from religious services or transportation of pupils and employees to and from private or parochial schools or transportation to and from functions for students and employees of private or parochial schools;
- (7) Transportation of any bona fide employees to and from their place(s) of regular employment;
- (8) Transportation of passengers when the movement is within a municipality exclusively, or within contiguous municipalities and within a residential and commercial zone adjacent to and a part of such municipality or contiguous municipalities; provided, the Commission shall have power in its discretion, in any particular case, to fix the limits of any such zone;
- (9) Transportation in bulk of sand, gravel, dirt, debris, and other aggregates, or ready-mixed paving materials for use in street or highway construction or repair;
- (10) Transportation of newspapers;
- (11) Transportation of insecticides, fungicides and the ingredients thereof; transportation of farm, dairy or orchard products from farm, dairy or orchard to warehouse, creamery, or other original storage or market;
- (12) Transportation for and under the control of cooperative associations organized and operating under the Federal Agricultural Marketing Act,

U.S.C.A. Title 12, § 1141(j), or under the State Cooperative Marketing Act, Chapter 54, Subchapter V, General Statutes of North Carolina, as amended, or for any federation of such cooperative associations; provided, such federation possesses no greater powers or purposes than such cooperative associations;

- (13) Transportation of livestock, or fish, including shellfish and shrimp, but not including manufactured products thereof;
- (14) Transportation of raw products of the forest, including firewood, logs, crossties, stave bolts, pulpwood, and rough lumber, but not including manufactured products therefrom;
- (15) Pickup, delivery, and transfer service for railroads, express companies, water carriers and motor carriers in connection with their respective line-haul services within the commercial zone of any municipality, as defined by the Commission between their terminals and places of collection or delivery of freight;
- (16) Transportation by a bona fide private carrier, as defined in G.S. 62-3(22);
- (17) Transportation of any commodity anywhere of a character not hauled in the ordinary course of business by a common carrier by motor vehicle.
- (18) Charter parties, as defined by this subdivision when such charter party is sponsored or organized by, and used by, any organized senior citizen group whose members are sixty (60) years of age or older. Such charter party shall be subject to subsections (f) and (g) of this section. "Charter party", for the purpose of this subdivision, means a group of persons who, pursuant to a common purpose and under a single contract, and at a fixed charge for the vehicle, have acquired the exclusive use of a passenger-carrying motor vehicle to travel together as a group from a point of origin to a specified destination or for a particular itinerary, either agreed upon in advance or modified by the chartering group after having left the place of origin. (1977, c. 217; 1979, c. 204, s. 1.)

**Editor's Note. —**

The 1977 amendment substituted "any bona fide employees to and from their place(s) of" for "bona fide employees of an industrial plant to and from their" in subdivision (7) of subsection (a).

The 1979 amendment added subdivision (18) of subsection (a).

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

## § 62-262. Applications and hearings.

**Editor's Note. —** For a survey of 1977 law on common carriers, see 56 N.C.L. Rev. 853 (1978).

**Where the issue of dormancy under § 62-112(c) has been raised,** if the Commission finds that the franchise is not dormant, it must then determine if the criteria required by § 62-111 for approval of the transfer has been met. If the Commission finds that the franchise is dormant under § 62-112(c), the application for transfer must be denied, because approval would in effect constitute the granting of a new

franchise without satisfying the new authority test and other requirements of subsection (e). State ex rel. Utilities Comm'n v. Estes Express Lines, 33 N.C. App. 174, 234 S.E.2d 624 (1977).

**Applied** in State ex rel. Utilities Comm'n v. Home Transp. Co., 28 N.C. App. 340, 220 S.E.2d 871 (1976).

**Cited** in State ex rel. Utilities Comm'n v. Estes Express Lines, 33 N.C. App. 99, 234 S.E.2d 628 (1977).

## § 62-266. Interstate carriers.

(c) Any person operating a for-hire motor vehicle in interstate commerce over the highways of this State without having properly registered with the Utilities Commission, its respective exempt operation, or a copy of its interstate authority

and each vehicle operated in this State shall be subject to a penalty of twenty-five dollars (\$25.00), which shall be added to the registration fees provided in G.S. 62-300, and said penalty shall be collected with said registration fee from any carrier operating on the highways of North Carolina without registering his interstate authority by inspectors and investigators of the Utilities Commission in accordance with rules and regulations duly adopted by the Utilities Commission before said vehicle shall be permitted to operate further upon the highways of North Carolina.

(1975, c. 447, s. 2.)

**Editor's Note.** — The 1975 amendment rewrote that part of subsection (c) that precedes the words "and said penalty" near the middle of the subsection.

As the rest of the section was not changed by the amendment, only subsection (c) is set out.

**§ 62-268. Security for protection of public; liability insurance.** — No certificate, permit or broker's license shall be issued or remain in force until the applicant shall have procured and filed with the Commission such security bond, insurance or self-insurance for the protection of the public as the Commission shall by regulation require. The Commission shall require that every motor carrier for which a certificate, permit, or license is required by the provision of this Chapter, shall maintain liability insurance or satisfactory surety of at least fifty thousand dollars (\$50,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, one hundred thousand dollars (\$100,000) because of bodily injury to or death of two or more persons in any one accident, and fifty thousand dollars (\$50,000) because of injury to or destruction of property of others in any one accident; and the Commission may require any greater amount of insurance as may be necessary for the protection of the public. Notwithstanding any rule or regulation to the contrary, the Commission shall not require that any insurance procured and filed be provided in any single policy of insurance or through a single insurer, if the insurers involved are otherwise qualified. A motor carrier may satisfy the requirements of the Commission by procuring insurance with coverage and limits of liability required by the Commission in one or more policies of insurance issued by one or more insurers. (1947, c. 1008, s. 19; 1949, c. 1132, s. 19; 1963, c. 1165, s. 1; 1973, c. 1206; 1977, c. 920.)

**Editor's Note.** —

The 1977 amendment added the third and fourth sentences.

## ARTICLE 14.

### *Fees and Charges.*

**§ 62-300. Particular fees and charges fixed; payment.** — (a) The Commission shall receive and collect the following fees and charges in accordance with the classification of utilities as provided in rules and regulations of the Commission, and no others:

- (1) Twenty-five dollars (\$25.00) with each notice of appeal to the Court of Appeals, and with each notice of application for a writ of certiorari.
- (2) With each application for a new certificate or new permit for motor and rail carrier rights, the fee shall be two hundred fifty dollars (\$250.00) when filed by Class 1 motor and rail carriers, one hundred dollars (\$100.00) when filed by Class 2 motor and rail carriers, and twenty-five dollars (\$25.00) when filed by Class 3 motor and rail

carriers, and twenty-five dollars (\$25.00) as filing fee for any amendment thereto so as to extend or enlarge the scope of operations thereunder, and twenty-five dollars (\$25.00) for each broker who applies for a brokerage license under the provisions of this Chapter.

- (3) With each application for a general increase in rates, fares and charges and for each filing of a tariff which seeks general increases in rates, fares and charges, the fee will be five hundred dollars (\$500.00) for Class A utilities and Class 1 motor and rail carriers, two hundred fifty dollars (\$250.00) for Class B utilities and Class 2 motor and rail carriers, one hundred dollars (\$100.00) for Class C utilities and twenty-five dollars (\$25.00) for Class D utilities and Class 3 motor and rail carriers; provided that in the case of an application or tariff for a general increase in rates filed by a tariff agent for more than one carrier, the applicable fee shall be the highest fee prescribed for any motor carrier included in the application or tariff. This fee shall not apply to applications for adjustments in particular rates, fares, or charges for the purpose of eliminating inequities, preferences or discriminations or to applications to adjust rates and charges based solely on the increased cost of fuel used in the generation or production of electric power.
- (4) One hundred dollars (\$100.00) with each application for discontinuance of train service, or for a change in or discontinuance of station facilities and with each application by a motor carrier of passengers for the abandonment or permanent or temporary discontinuance of transportation service previously authorized in a certificate.
- (5) With each application for a certificate of public convenience and necessity or for any amendment thereto so as to extend or enlarge the scope of operations thereunder, the fee shall be two hundred fifty dollars (\$250.00) for Class A utilities, one hundred dollars (\$100.00) for Class B utilities, and twenty-five dollars (\$25.00) for Class C and D utilities.
- (6) With each application for approval of the issuance of securities or for the approval of any sale, lease, hypothecation, lien, or other transfer of any property or operating rights of any carrier or public utility over which the Commission has jurisdiction, the fee shall be two hundred fifty dollars (\$250.00) for Class A utilities and Class 1 motor and rail carriers, one hundred dollars (\$100.00) for Class B utilities and Class 2 motor and rail carriers, and twenty-five dollars (\$25.00) for Class C and D utilities and Class 3 motor and rail carriers; provided, that in the case of sales, leases and transfers between two or more carriers or utilities, the applicable fee shall be the highest fee prescribed for any party to the transaction.
- (7) Ten dollars (\$10.00) with each application, petition, or complaint not embraced in (2) through (6) of this section, wherein such application, petition, or complaint seeks affirmative relief against a carrier or public utility over which the Commission has jurisdiction. This fee shall not apply to applications for adjustments in particular rates, fares or charges for the purpose of eliminating inequities, preferences or discriminations; nor shall this fee apply to applications, petitions, or complaints made by any county, city or town; nor shall this fee apply to applications or petitions made by individuals seeking service from a public utility.
- (8) One dollar (\$1.00) for the registration with the Commission of each motor vehicle to be put in operation by a motor carrier operating under the jurisdiction of the Commission, and a fee of one dollar (\$1.00) for the annual reregistration of each such motor vehicle.

- (9) One dollar (\$1.00) for each page (8½ x 11 inches) of transcript of testimony, but not less than five dollars (\$5.00) for any such transcript.
- (10) Twenty cents (20¢) for each page reproduced by photostatic or similar process and for each page of an order which can be made available without the necessity of copying or reproduction.
- (11) Twenty-five dollars (\$25.00) for the filing with the Commission of the interstate motor carrier operating authority or registration of interstate exempt operation of every motor carrier operating into, from, within, or through North Carolina and filed with the Commission under the provisions of G.S. 62-266 and five dollars (\$5.00) for filing all subsequent amendments thereto to maintain said filing in a current status.
- (12) One dollar (\$1.00) for the registration with the Commission of each motor vehicle operated into, from, within, or through North Carolina by interstate carriers and registered with the Commission under the provisions of G.S. 62-266, and a fee of one dollar (\$1.00) for the annual reregistration of each such motor vehicle.

(1975, c. 447, s. 1; 1977, c. 1003; 2nd Sess., c. 1219, s. 32; 1979, c. 792.)

**Editor's Note.** — The 1975 amendment, in subsection (a), inserted "in accordance with the classification of utilities as provided in rules and regulations of the Commission" in the introductory paragraph, rewrote subdivisions (2), (3), (5) and (6), increased the fee in subdivision (4) from \$25.00 to \$100.00, increased the reregistration fees in subdivisions (8) and (12) from 25 cents to \$1.00, eliminated subdivision (10), relating to fees for copies and for certification of copies of papers, orders, certificates and other records, and redesignated former subdivisions (11) through (13) as (10) through (12).

The 1977 amendment, effective July 1, 1977, substituted "One dollar (\$1.00)" for "Thirty

cents (30¢)" at the beginning of subdivision (9).

The 1977, 2nd Sess., amendment, effective July 1, 1978, substituted "Fifty cents (50¢)" for "One dollar (\$1.00)" at the beginning of subdivision (a)(9).

The 1979 amendment substituted "One dollar (\$1.00)" for "Fifty cents (50¢)" at the beginning of subdivision (9) of subsection (a).

Session Laws 1977, 2nd Sess., c. 1219, s. 57, contains a severability clause.

As the rest of the section was not changed by the amendment, only subsection (a) is set out.

## ARTICLE 15.

### *Penalties and Actions.*

#### **§ 62-310. Public utility violating any provision of Chapter, rules or orders; penalty; enforcement by injunction.**

Cited in State ex rel. Utilities Comm'n v. United Tank Lines, 34 N.C. App. 543, 239 S.E.2d 266 (1977).

**§ 62-327. Gifts to members of Commission, Commission employees, or public staff.** — It shall be unlawful for any officer, agent, employee, or attorney of any public utility or any public utility holding company, subsidiary, or affiliated company, to knowingly offer or make to any member of the Commission, Commission staff, or public staff, any gift of money, property, or anything of value. It shall be unlawful for any member of the Commission, Commission staff, or public staff to knowingly accept any gift of money, property, or anything of value from any officer, agent, employee, or attorney of any public utility or any public utility holding company, subsidiary, or

affiliated company; provided, however, that it shall not be unlawful for members of the Commission, Commission staff, or public staff to attend public breakfasts, lunches, dinners, or banquets sponsored by such entities. Any person violating this section shall be guilty of a misdemeanor and may be fined in the discretion of the court; provided, further, that any member of the Commission staff, or member of the public staff violating this section shall also be subject to dismissal for cause. (1977, c. 468, s. 16.)

**Editor's Note.** — Session Laws 1977, c. 468, s. 24, makes this section effective July 1, 1977.

Session Laws 1977, c. 468, s. 23, provides: "Public staff provisions renewable after four years. (a) Unless the General Assembly shall otherwise direct, effective August 31, 1981, the provisions of G.S. 62-15 as set forth in sections 4 and 18 of this bill relating to the office of executive director and the public staff in the Commission shall terminate, the office of executive director shall terminate, the positions assigned to the public staff shall be assigned to the Commission pursuant to pertinent provisions of Chapter 62 of the General Statutes, and the words "public staff" as they appear in G.S.

62-34(b), G.S. 62-51, G.S. 62-70, and G.S. 62-327 shall be stricken from said sections of Chapter 62.

(b) No other provisions of this act shall be affected by the provisions of subsection (a) of this section and the termination date provided in subsection (a) of this section shall apply only to those provisions of this act establishing the office of executive director and a public staff in the Commission and describing the duties and responsibilities of the executive director and the public staff."

Session Laws 1977, c. 468, s. 21, contains a severability clause.

## §§62-328 to 62-332: Reserved for future codification.

### ARTICLE 16.

#### *Security Provisions.*

**§ 62-333. Screening employment applications.** — The Chief Personnel Officer or his designee of any public utility franchised to do business in North Carolina shall be permitted to obtain from the State Bureau of Investigation a confidential copy of criminal history record information for screening an applicant for employment with or an employee of a utility or utility contractor where the employment or job to be performed falls within a class or category of positions certified by the North Carolina Utilities Commission as permitting or requiring access to nuclear power facilities or access to or control over nuclear material.

The State Bureau of Investigation shall charge a reasonable fee to defray the administrative costs of providing criminal history record information for purposes of employment application screening. The State Bureau of Investigation is authorized to retain fees charged pursuant to this section and to expend those fees for the purpose of discharging its duties under this section, provided that all such fees received after March 30, 1980 shall be credited to the General Fund. (1979, c. 796.)

### STATE OF NORTH CAROLINA

#### DEPARTMENT OF JUSTICE

Raleigh, North Carolina

October 15, 1979

I, Rufus L. Edmisten, Attorney General of North Carolina, do hereby certify that the foregoing 1979 Supplement to the General Statutes of North Carolina was prepared and published by the Michie Company under the supervision of the Department of Justice of the State of North Carolina.

RUFUS L. EDMISTEN  
Attorney General of North Carolina





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